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REFORM OF THE FEDERAL CRIMINAL LAWS

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HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

APRIL 16, 1973

PART V

S. 1, S. 716, S. 1400 and S. 1401

[Sentence of death and appellate review of sentencing]

Printed for the use of the Committee on the Judiciary



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PART V
REFORM OF FEDERAL CRIMINAL LAWS

MONDAY, APRIL 16, 1973

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 2228, New Senate Office Building, Senator John L. McClellan, presiding.

Present: Senator McClellan (presiding) and Senator Hruska.

Also present: G. Robert Blakey, chief counsel; Paul C. Summitt, deputy chief counsel; Kenneth A. Lazarus, minority counsel; Dennis C. Thelen, assistant counsel; and Mabel A. Downey, clerk.

Senator McCLELLAN. The committee will come to order.

The Chair wishes to make a brief introductory statement for these hearings.

Today the Subcommittee on Criminal Laws and Procedures begins the first of its hearings for the 93d Congress on the subject of the codification, revision, and reform of the Federal criminal laws. With the start of these hearings, I am hopeful that we are entering the final phase of this most worthwhile and necessary project.

On January 4, 1973, I introduced for myself and Senators Ervin and Hruska, S. 1, the Criminal Justice Codification, Revision and Reform Act of 1973. This bill is the product of over 6 years of labor, which began with our appointment to the National Commission on Reform of Federal Criminal Laws in 1966. Nevertheless, as I stated on the floor of the Senate in January, S. 1 is not intended as the final draft of a new Federal penal code. There are a number of issues still to be decided, some of which will be controversial. But I do feel that we have achieved a good beginning.

On March 27, 1973, Senator Hruska and I also introduced for the Administration S. 1400, the Criminal Code Reform Act of 1973. This bill is the product of 2 years of effort by the Criminal Code Unit created in the Department of Justice by the Attorney General in response to the direction of the President of January 16, 1971 to prepare a thorough evaluation of the report of the National Commission on Reform of Federal Criminal Laws.

Copies of S. 1, S. 1400 and S. 1401, and their introductory statements and supporting materials will be printed in the record following these opening remarks.

The subject of today's hearings will be capital punishment in light

of the Supreme Court's opinion in *Furman v. Georgia*, 408 U.S. 238 (1972).

The subcommittee takes up this subject at a time when our society is confronted with what can only be described as a most alarming rise in violent crimes—particularly the most violent of crimes—murder.

In the period between 1966 and 1971, the number of murders in this country rose 61 percent, while the rate of murder per 100,000 persons rose 52 percent. More importantly, the percentage of all homicides that were known or suspected to be felony murders—homicides committed in the course of another crime—rose from 21.8 percent to 27.5 percent.

Yet, concomitant with this rise in crime—indeed, in spite of it—the Supreme Court declared that the death penalty, as it is now implemented in this country, is unconstitutional. The Court found that a jury of peers—a jury representative of the various elements of our society—surely the epitome of our democratic ideal—is not constitutionally capable of determining that a crime is so heinous or so brutal as to render its perpetrator deserving of the ultimate penalty.

The effect of *Furman v. Georgia* has been that over 600 convicted murderers and rapists will not suffer a punishment imposed upon them by society. The effect of this decision will be the eventual release of many of these individuals to again prey upon society.

The opponents have been vociferous in their assertion that it serves no useful purpose and specifically that it does not deter crime. This argument, in my judgment, is shallow. Certainly, a penalty that is not carried out will not deter anything. The last execution in this country took place on June 2, 1967. Since that time a moratorium has been in effect, not because of society's disapproval of capital punishment, but because the Supreme Court was taking an opportunity to rule on its constitutionality. Surely, it cannot be seriously argued that the sharp rise in homicides that accompanied this moratorium was merely coincidental.

When the law is not enforced and its punishments are not imposed it loses its credibility, and when it loses its credibility, it does not deter. We are now all reaping the whirlwind.

It is sometimes said deterrence will not work with homicide since murders are committed in the heat of passion, when the individual does not consider the consequences of his actions. This is true in some cases, but not all. As I have noted, of all murders committed in 1971, 27.5 percent were either known or suspected to have taken place during the commission of a felony. Premeditation, not passion, motivated these crimes. They were not situations of uncontrollable rage.

Where reason is present the thought that one consequence of an individual's action is the forfeiture of his own life will, in most instances, serve as a deterrent.

Experience has proven this point. Recently, former Criminal Court Judge Samuel Leibowitz of New York, an eminent jurist who presided over many capital cases explained that, when he asked hardened criminals why they would not shoot their way out to escape capture, they would inevitably reply, "I was afraid of the hot seat, Judge." [The New York Times, June 30, 1972, p. 1, col. 7.]

Indeed, even in situations involving passion, the knowledge that murder will result in the swift termination of the murderer's own life must necessarily encourage restraint and self-control.

Those who oppose capital punishment also assert that our Nation no longer approves of the taking of life for crime and, for that reason, this penalty should be abolished. Once again the facts do not bear this out. A recent Gallup Poll reveals that, of adults 18 and over, 57 percent are in favor of capital punishment for persons convicted of murder. [The Washington Post, Nov. 23, 1972, p. A27, col. 1.] These are not uncivilized people; they recognize that if society is not to degenerate into anarchy, an appropriate punishment is necessary for those who would destroy it.

Even criminals now recognize this principal. Soon after the decision in *Furman*, a bank robbery took place in New York City. During the robbery, in which many hostages were taken, one of the robbers declared: "I'll shoot everybody in the bank. The Supreme Court will let me get away with this. There's no death penalty. It's ridiculous. I can shoot everyone here, then throw my gun down and walk out and they can't put me in the electric chair. You have to have a death penalty, otherwise this can happen every day." [The Evening Star and the Washington Daily News, Aug. 23, 1972, p. 1, col. 1.]

More recently, here in the Washington Metropolitan area, there was an armed holdup of a vending machine company, in which 5 bandits fought police in a gun battle in which 1 person was killed and 6 hurt, while 25 hostages were held in a small restroom. The bandits periodically would open the door and fire shots into the room. One of the gunmen snarled at one point at the huddled hostages, "I think I'll throw a hand grenade in here. What can I lose—there's no death penalty any more." [The Evening Star and Washington Daily News, March 14, 1973, p. 1, col. 4.]

This type of occurrence has not been the only consequence of *Furman*. Indeed, the decision has already had an effect that must be quite beyond the expectations of the Supreme Court. The Supreme Courts of both Delaware and North Carolina have recently decided that statutes in those States requiring a sentence of death for certain crimes, except where a judge or jury, in its discretion, decides life imprisonment more appropriate, are unconstitutional in light of *Furman*. [See *State v. Dickerson* (Del.), 12 Criminal Law 2145, Nov. 1, 1972; and *State v. Waddell* (N.C.), 12 Criminal Law 2361, Jan. 18, 1973.] To render the statutes constitutional, these courts have severed the discretionary life imprisonment provisions leaving the States with mandatory death sentences for specified crimes. What the Supreme Court has prevented, therefore, is not capital punishment, but judges and juries in these States from exercising their intelligence on a case by case basis in the imposition of punishment.

It is clear that the decision in *Furman* is creating havoc in legal systems throughout the country. Efforts must be made, I believe, to solve the problems that have been created. It is hoped that through the testimony of our distinguished witnesses today that the problems created by the *Furman* decision can be resolved.

Without objection, I will insert in the record following these remarks three exhibits indicating the rise in murders from 1966 to 1971 and a percentage breakdown of the types of murders committed during that period.

Senator Hruska, do you have any comments?

Senator HRUSKA. Just a brief statement, Mr. Chairman.

I believe we are all gratified with the scheduling of today's hearing, because it is really the beginning of the 93d Congress legislative work on these two bills that seek to create a new Federal Criminal Code., S. 1 was introduced by our distinguished chairman on January 4, and S. 1400, the Administration's bill, was introduced by this Senator on March 27.

Both of these bills provide for the imposition of the death penalty in certain cases. Although they vary slightly in terms of the offenses to which they would be applicable and procedures to be followed, both bills see capital punishment as a valid punishment in cases of certain vicious activity.

In addition to the previous bills there is also before us S. 1401, which contains only the provisions for the death penalty.

Mr. Chairman, I have a brief statement which I should like to insert in the record at this point.

[The statement above-referred to follows:]

OPENING REMARKS OF SENATOR ROMAN L. HRUSKA

Mr. Chairman, this Senator is delighted with the scheduling of today's hearings by the Subcommittee. It marks the beginning of the 93rd Congress' legislative work on S. 1, the massive "Criminal Justice Codification, Revision and Reform Act of 1973", introduced by our distinguished Chairman on January 4, S. 1400, the Administration's "Criminal Code Reform Act of 1973" which I introduced on March 27. These two bills will serve as the primary vehicles for the recodification of our Federal Criminal law under the distinguished leadership of Senator McClellan.

Additionally, the particular focus of today's hearings will be on two subjects in which I have maintained an abiding interest over the years. This morning we will consider the issue of capital punishment. Our session later this afternoon will deal with the subject of appellate review of criminal sentences.

I shall limit my remarks at this time to capital punishment and postpone my introductory comments on the latter issue until this afternoon.

Both S. 1 and S. 1400 provide for the imposition of the death penalty in certain instances. Although they vary slightly in terms of the offenses to which they would be applicable and procedures to be followed, both bills see capital punishment as a valid sanction in cases of certain vicious criminal activity.

Additionally, on March 27, Chairman McClellan and I introduced S. 1401. This bill would work the same effect with respect to the death penalty as S. 1400. It was introduced separately, however, in order to allow the Congress to act upon the death penalty as an independent issue of immediate concern which can be resolved prior to final action on the larger project of rewriting the present Federal Criminal Code. This is in accord with a suggestion of the President contained in his March 14 crime message.

Hopefully, this Subcommittee can act on a bill to cure the Constitutional defects which are inherent in present law as announced in *Furman v. Georgia*, 408 U.S. 238 (1972) and thus restore the death penalty as an available sentence in certain heinous situations. I believe such action is completely necessary and proper.

I want to welcome Deputy Attorney General Sneed and Assistant Attorney General Dixon here this morning. I look forward to working closely with both of them on this and other issues inherent in the codification effort during the months ahead. Their wise counsel should prove invaluable to the Subcommittee.

I would only make this additional suggestion regarding what the chairman has outlined so vividly and so realistically by way of justification for the death penalty being made effective once more.

So often it is said that to take a human life is debasing and degrading. It is also argued that it has a bad effect on people and the public. But that is subject to two observations. One is that the victim of that murder in the deprivation of his life is also downgraded and debased. Secondly, those upon whom this death penalty would be imposed believe themselves in the death penalty. They invoked it themselves. They, themselves, practice the deprivation of human life upon someone else and visit that penalty upon someone else.

There can be very little doubt that there will be a great deal of deterrent in it and whatever degrading or downgrading there is in the human spirit, it certainly wouldn't be from the standpoint of just retribution alone, but in the direction of deterrent.

I fully subscribe to the arguments and the reasons cited so well by the chairman that this bill, this revitalizing and reconstituting of the death penalty will have very effective deterrent capabilities.

Senator McCLELLAN. Thank you, Senator.

[Material referred to in opening statement of Senator McClellan follows:]

EXHIBIT NO. 1

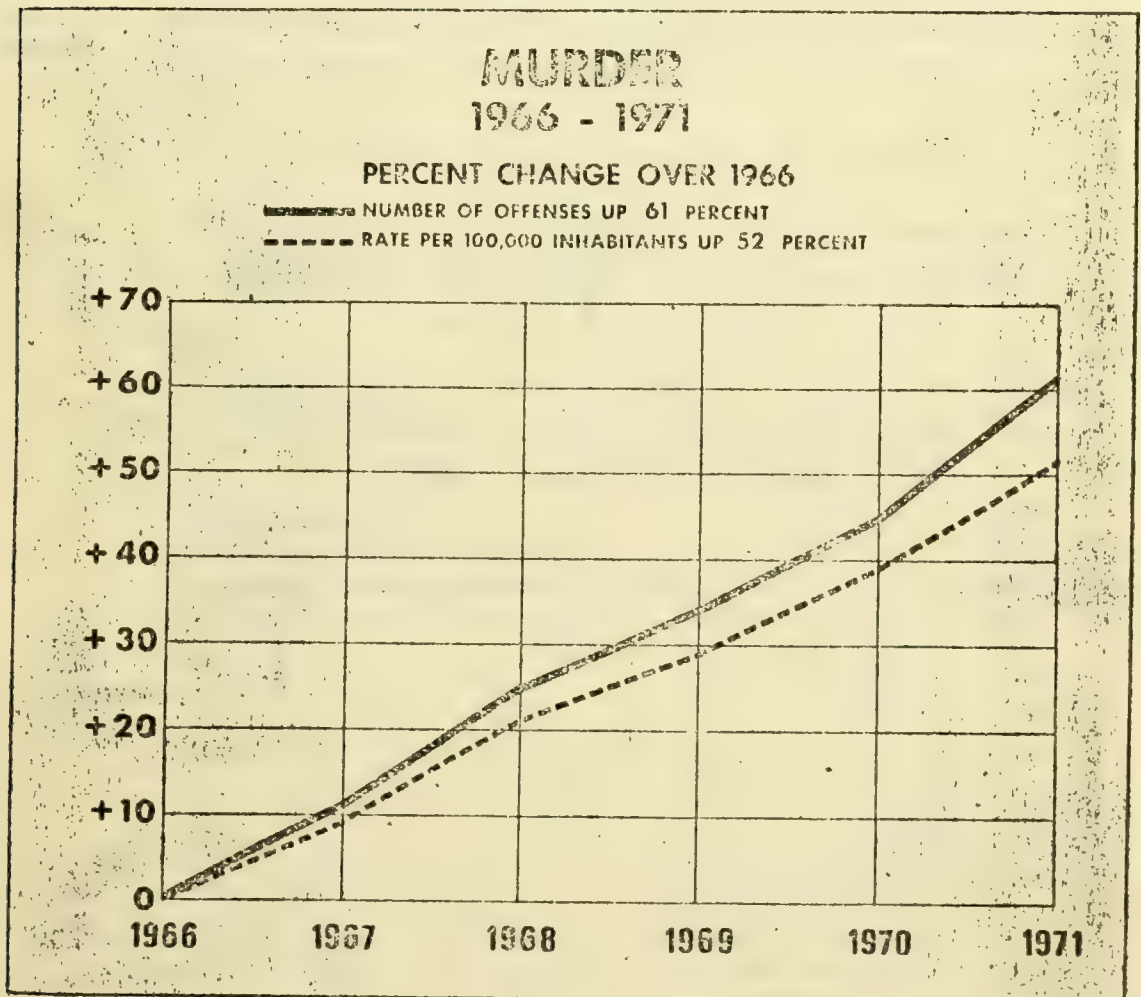


EXHIBIT NO. 2

MURDER BY CIRCUMSTANCE—1971

[Percent distribution]

Region	Total	Spouse killing spouse	Parent killing child	Other family killings	Roman- tic tri- angle and lovers quarrels	Other argu- ments	Known felony type	Sus- pected felony type
Northeastern States.....	100.0	9.5	4.3	4.7	5.6	40.3	25.4	10.2
North Central States.....	100.0	11.3	3.2	9.4	5.4	38.2	24.8	7.7
Southern States.....	100.0	15.3	2.4	10.4	7.6	45.5	14.0	4.8
Western States.....	100.0	13.3	5.7	6.5	5.4	36.9	23.9	8.3
Total.....	100.0	12.8	3.5	8.4	6.3	41.5	20.4	7.1

FBI Chart

EXHIBIT NO. 3

PERCENT OF MURDERS WHICH WERE WITH FELONY CIRCUMSTANCES

Year	Known felony type	Suspected felony type
1966.....	14.8	7.0
1967.....	15.6	5.9
1968.....	17.4	7.5
1969.....	19.3	7.2
1970.....	20.4	8.4
1971.....	20.4	7.1

FBI Chart

93^d CONGRESS
1ST SESSION

S. 1

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1973

Mr. McCLELLAN (for himself, Mr. ERVIN, and Mr. HRUSKA) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To codify, revise and reform title 18 of the United States Code; to make appropriate amendments to the Federal Rules of Criminal Procedure; to make conforming amendments to criminal provisions of other titles of the United States Code; and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the*
2 *United States of America in Congress assembled,* That this Act may be
3 cited as the “Criminal Justice Codification, Revision and Reform Act
4 of 1973.”

5 TITLE I—CODIFICATION, REVISION AND REFORM OF
6 TITLE 18

7 SEC. 101. Title 18, United States Code, is amended to read as follows:

8 “TITLE 18.—FEDERAL CRIMINAL CODE

9 “TABLE OF CONTENTS

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10 “PART I.—GENERAL PART

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“2. PRINCIPLES OF CRIMINAL LIABILITY.....	1-2A1
“3. BARS AND DEFENSES TO CRIMINAL LIABILITY.....	1-3A1
“4. SENTENCING	1-4A1

1 **“Chapter 1.—GENERAL PROVISIONS**

“Sec.

“1-1A1. Title.

“1-1A2. General Purposes.

“1-1A3. Principle of Legality ; Rule of Construction.

“1-1A4. General Definitions.

“1-1A5. Classification of Offenses.

“1-1A6. Territorial Jurisdiction.

“1-1A7. Extraterritorial Jurisdiction.

“1-1A8. Assimilated Offenses.

2 **“Chapter 2.—PRINCIPLES OF CRIMINAL LIABILITY**

“Sec.

“1-2A1. Culpability.

“1-2A2. Causal Relationship Between Conduct and Result.

“1-2A3. Criminal Solicitation.

“1-2A4. Criminal Attempt.

“1-2A5. Criminal Conspiracy.

“1-2A6. Complicity.

“1-2A7. Organization Criminal Liability.

“1-2A8. Personal Criminal Liability for Conduct on Behalf of Organization.

3 **“Chapter 3.—BARS AND DEFENSES TO CRIMINAL**
4 **LIABILITY**

“Subchapter

“A. General Provisions.

“B. Bars to Prosecution.

“C. Defenses.

5 **“Subchapter A.—General Provisions**

“Sec.

“1-3A1. General Principles.

6 **“Subchapter B.—Bars to Prosecution**

“Sec.

“1-3B1. Time Limitations.

“1-3B2. Entrapment.

“1-3B3. Immaturity.

7 **“Subchapter C.—Defenses**

“Sec.

“1-3C1. Intoxication.

“1-3C2. Mental Illness or Defect.

“1-3C3. Execution of Public Duty.

“1-3C4. Defense of Person, Property or Prevention of Criminal Conduct.

“1-3C5. Ignorance or Mistake of Fact.

“1-3C6. Ignorance or Mistake of Law.

“1-3C7. Duress.

“1-3C8. Consent.

8 **“Chapter 4.—SENTENCING**

“Subchapter

“A. General Provisions.

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“C. Fines.

“D. Probation.

“E. Sentence of Death.

9 **“Subchapter A.—General Provisions**

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“1-4A2. Resentence.

“1-4A3. Disqualification.

“1-4A4. Criminal Forfeiture.

“1-4A5. Joint Sentence.

1 **"Subchapter B.—Imprisonment**

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"1-4B2. Upper-range Imprisonment for Dangerous Special Offender.

"1-4B3. Duration of Imprisonment.

2 **"Subchapter C.—Fines**

"Sec.

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"1-4C2. Response to Nonpayment of Fine.

3 **"Subchapter D.—Probation**

"Sec.

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"1-4D2. Conditions of Release.

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4 **"Subchapter E.—Sentence of Death**

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"B. National Security.

"C. Foreign Relations and Trade.

"D. Immigration, Naturalization, and Passports.

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8 **"Subchapter B.—National Security**

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“Sec.

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3

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"B. Physical Obstruction of Government Function and Related Offenses.

"C. Obstruction of Justice.

"D. Perjury, False Statement, and Integrity of Public Records.

"E. Bribery and Intimidation.

"F. Official Misconduct, Nondisclosure, and Impersonation.

"G. Internal Revenue and Customs Offenses.

"H. Protection of Political Processes.

4

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"2-6A1. Definition of terms.

5

"Sec.

"2-6B1. Physical Obstruction of Government Function.

"2-6B2. Preventing Arrest, Search, or Discharge of Other Duties.

"2-6B3. Hindering Law Enforcement.

"2-6B4. Bail Jumping.

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"2-6B6. Contraband.

"2-6B7. Flight to Avoid Prosecution or Giving Testimony.

7

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3 **“§ 1-1A1. Title**

4 “Title 18 of the United States Code shall be entitled “Federal Crim-
5 inal Code” and may be cited as “18 U.S.C. § ——” or as “Federal Crim-
6 inal Code § ——.”

7 **“§1-1A2. General Purposes**

8 “The purpose of this code is to establish justice in the context of a
9 federal system so that the nation and its people may be secure in their
10 persons, property, relationships, and other interests.

11 “This code aims at the articulation of the nation’s fundamental sys-
12 tem of public values and its vindication through the imposition of
13 merited punishment.

14 “This code seeks to promote the general security through deter-
15 rence by giving due notice of the offenses and sanctions prescribed by
16 law, and where this proves ineffective, by the rehabilitation of the
17 corrigible offender or the appropriate incapacitation of the incorrigible
18 offender.

19 **“§ 1-1A3. Principle of Legality; Rule of Construction**

20 “This code rests on the fundamental principle that no person ought
21 to be found guilty of an offense and subjected to punishment unless
22 his conduct and its accompanying culpability was prohibited by law.

23 “The code shall be construed in light of this principle as a whole
24 according to the fair import of its terms to achieve its general pur-
25 poses.

26 **“§ 1-1A4. General Definitions**

27 “As used in this code, unless it is otherwise provided or a different
28 meaning plainly is required :

29 “(1) ‘accomplice’ means a person who is in complicity with
30 another person within the meaning of section 1-2A6 ;

1 “(2) ‘act’ or ‘action’ means a bodily effort or movement. The
2 following are not acts: (i) a reflex or convulsion; (ii) a bodily
3 movement during unconsciousness or sleep; (iii) conduct during
4 hypnosis or resulting from hypnotic suggestion; or (iv) a bodily
5 movement that otherwise is not a product of the effort or deter-
6 mination of a human being, either conscious or habitual;

7 “(3) ‘affects commerce jurisdiction of the United States’ means
8 the offense affects, directly or indirectly, interstate commerce or
9 foreign commerce;

10 “(4) ‘aids’ includes assists, commands, induces, procures, en-
11 courages, or counsels;

12 “(5) ‘agent’ includes a representative, officer, agent, or employee
13 or, in the case of an organization, a partner, director, officer,
14 servant, employee, or other person authorized to act in behalf
15 of the organization or, in the case of a nation, a subject or citizen;

16 “(6) ‘attempt’ has the meaning prescribed in section 1-2A4;

17 “(7) ‘attorney for the government’ means the Attorney Gen-
18 eral, an authorized assistant of the Attorney General, a United
19 States Attorney, or an authorized assistant of a United States
20 Attorney; ‘Attorney General’ means the Attorney General of the
21 United States, the Deputy Attorney General, or any Assistant
22 Attorney General;

23 “(8) ‘benefit’ means any gain or advantage to the person and
24 includes any gain or advantage to a person other than such per-
25 son; ‘pecuniary benefit’ means a benefit in the form of money,
26 tangible or intangible property, commercial interests or anything
27 else the primary significance of which is economic gain;

28 “(9) ‘bodily injury’ means physical pain, physical illness, or
29 any impairment of physical condition;

30 “(10) ‘co-conspirator’ means a person who conspires with
31 another person, within the meaning of section 1-2A5;

32 “(11) ‘code’ or ‘this code’ means the Federal Criminal Code;
33 ‘section’ or ‘chapter’ refers to a section or chapter of this code;

34 “(12) ‘commerce jurisdiction of the United States’ means (i)
35 the property which is the subject of the offense is moved or is
36 moving in interstate or foreign commerce; (ii) movement of any
37 person across a state or United States boundary occurs in the
38 commission of or immediate flight from commission of the offense;
39 or (iii) the offense is against or involves the use of a transportation,

1 communication, or power facility of interstate or foreign
2 commerce;

3 “(13) ‘conduct’ means an action, possession, or omission, or a
4 series of acts, possessions, or omissions;

5 “(14) ‘conspire’ has the meaning prescribed in section 1-2A5;

6 “(15) ‘correctional facility’ includes penal correctional institu-
7 tions, penitentiaries, reformatories, jails, camps, youth and juve-
8 nile facilities, industries, hospitals for delinquents and offenders,
9 narcotic treatment facilities, drug abuse, alcoholism, and commu-
10 nity treatment centers and programs;

11 “(16) ‘court’ means court of the United States; ‘court of the
12 United States’ means any of the following courts: the Supreme
13 Court of the United States, a United States court of appeals, a
14 United States district court established under chapter 5, title 28,
15 United States Code, the District Court of Guam, the District
16 Court of the Virgin Islands, the United States Court of Claims,
17 the United States Court of Customs and Patent Appeals, the Tax
18 Court of the United States, the Customs Court, and the Court
19 of Military Appeals;

20 “(17) ‘crime’ means a misdemeanor or a felony; ‘criminal’ or
21 ‘criminally’ refers to any offense;

22 “(18) ‘criminal negligence’ and variants of the term designate
23 the standard prescribed in section 1-2A1;

24 “(19) ‘culpable’ or ‘culpability’ has the meaning prescribed in
25 section 1-2A1;

26 “(20) ‘dangerous weapon’ means any firearm or other weapon,
27 device, instrument, material, or substance, whether animate or
28 inanimate, which in the manner in which it is used or is intended
29 to be used is capable of producing death or serious bodily injury;

30 “(21) ‘deadly force’ means force which a person uses with the
31 intent of causing, or which he knows to create a substantial risk
32 of causing, death or serious bodily injury. Recklessly firing a fire-
33 arm or hurling a destructive device in the direction of another
34 person or at a moving vehicle constitutes deadly force. A threat
35 to cause death or serious bodily injury does not constitute deadly
36 force, so long as the person’s intent is limited to creating an apprehension that he will use deadly force if necessary;

37 “(22) ‘destructive device’ includes any explosive, incendiary or
38 poison gas bomb, grenade, mine, rocket, missile, or similar device;

39 “(23) ‘element of an offense’ means, as specified in the definition
40

of the offense or its grading, (i) the conduct, (ii) the attendant circumstances, (iii) the culpability, and (iv) the result;

“(24) ‘Federal property jurisdiction of the United States’ means the property which is the subject of the offense is owned by or in the custody or control of the United States or is being manufactured, constructed, or stored for the United States;

“(25) ‘Federal public servant jurisdiction of the United States’ means the victim of the offense or the defendant or an accomplice is a Federal public servant engaged in the performance of his official duties or victimized because of his official duties;

“(26) ‘felony’ means an offense for which a sentence to a term of imprisonment of one year or more is authorized;

“(27) ‘financial institution’ means:

“(i) a bank the deposits of which are insured by Federal Deposit Insurance Corporation;

“(ii) a member, as defined in section 2 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1422) of the Federal home loan bank system, and any Federal home loan bank;

“(iii) an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation;

“(iv) a credit union the accounts of which are insured by the Administrator of the National Credit Union Act, as amended (12 U.S.C. 1751 et seq.); or

“(v) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives production credit association, mortgage associations, mortgage corporation, trust company, savings bank, or other banking or financial institution organized or operating under Federal statute or a rule, regulation, or order issued under such statute;

“(28) ‘financial institution jurisdiction of the United States’ means the property which is the subject of the offense is owned by or in the custody of a financial institution;

“(29) ‘firearm’ means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon;

“(30) ‘force’ means physical action, threat, or menace against another, including confinement;

1 “(31) ‘foreign commerce’ means commerce with a foreign coun-
2 try;

3 “(32) ‘foreign official’ means an official of a foreign government
4 of a character which is customarily accredited as such to the
5 United States, the United Nations, or the Organization of Ameri-
6 can States, and includes diplomatic and consular officials;

7 “(33) ‘government’ means (i) the government of the United
8 States or any political unit within the United States; (ii) any
9 agency, subdivision, or department of the United States or such
10 political unit, including the executive, legislative, and judicial
11 branches; (iii) any corporation or other association organized by
12 a government for the execution of a government program and
13 subject to control by a government; or (iv) any corporation or
14 agency established under an interstate compact or international
15 treaty;

16 “(34) ‘government agency’ includes any department, independ-
17 ent establishment, commission, administration, authority, board,
18 or bureau of a government or any corporation controlled by a
19 government;

20 “(35) ‘high public servant’ means the President of the United
21 States, the President-Elect, the Vice President or, if there is no
22 Vice President, the officer next in the order of succession to the
23 office of President of the United States, the Vice President-Elect,
24 any person who is acting as President under the Constitution
25 and laws of the United States, a candidate for President or Vice
26 President, any member or member-designate of the President’s
27 cabinet, a Member of Congress or a candidate for Congress, a
28 Federal judge or a nominee for a Federal judgeship, a holder of
29 an office for which confirmation by the United States Senate is re-
30 quired other than the holder of a military commission, a foreign
31 official, or a citizen of a foreign nation who is present in the United
32 States for a limited period and who is designated by the Secretary
33 of State as an official guest of the United States;

34 “(36) ‘high public servant jurisdiction of the United States’
35 means the victim of the offense is a high public servant or a mem-
36 ber of the immediate family of such person;

37 “(37) ‘human being’ means a person who has been born and
38 is alive;

39 “(38) ‘included offense’ means (i) an offense which is specifically
40 designated as such in connection with the definition of an offense;

(ii) an offense which is specifically designated as such in connection with the definition of such specifically designated included offense; (iii) a lesser grade of the same offense, or; (iv) a criminal solicitation or criminal attempt to commit the same offense;

“(39) ‘includes’ should be read as if the phrase ‘but is not limited to’ were also set forth;

“(40) ‘in fact’ means that the factor, condition, or objective to which the phrase applies is one for which culpability is not required;

“(41) ‘intentionally’ and variants of the term designate the standard prescribed in section 1-2A1;

“(42) ‘interstate commerce’ means commerce between one state and another state;

“(43) ‘knowingly’ and variants of the term designate the standard prescribed in section 1-2A1;

“(44) ‘law enforcement officer’ means a public servant authorized by law or by a government agency or branch to conduct or engage in investigation or prosecution for violation of law or other government function;

“(45) ‘local’ means of or pertaining to any political unit within any state;

“(46) ‘misdemeanor’ means an offense for which a sentence to a term of imprisonment in excess of thirty days but not in excess of six months is authorized;

“(47) ‘offense’ means conduct for which a sentence to a term of imprisonment or a fine is authorized;

“(48) ‘official conduct’ means a decision, opinion, recommendation, vote, or other exercise of discretion;

“(49) ‘official detention’ means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for rendition, extradition, or deportation, or custody for purposes incident to these purposes, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

“(50) ‘official proceeding’ means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to receive evidence under oath, including any

1 judge, chairman of any joint committee, committee or subcom-
2 mittee of either House of Congress, referee, hearing examiner,
3 magistrate, commissioner, notary, or other person taking testi-
4 mony or a deposition in connection with any such proceeding;

5 “(51) ‘organization’ means any entity considered as such in
6 law, including a corporation, company, association, firm, partner-
7 ship, joint stock company, foundation, institution, society, union,
8 club, church, government, government agency, or any other
9 group of persons organized for any purpose;

10 “(52) ‘person’ includes a human being and an organization;

11 “(53) ‘piracy’ means an offense committed by the crew or the
12 passengers of a private ship, aircraft, or spacecraft, or committed
13 by the crew of a warship or government ship, aircraft, or space-
14 craft whose crew has mutinied and taken control of the ship,
15 aircraft, or spacecraft, and is directed (i) against a ship, aircraft,
16 spacecraft, persons or property in a place outside the jurisdiction
17 of any nation or international organization or (ii) against another
18 ship, aircraft, or spacecraft or against persons or property on
19 board another ship, aircraft, or spacecraft on or over all parts of
20 the sea that are not included in the territorial sea or in the internal
21 waters of any nation;

22 “(54) ‘piracy jurisdiction of the United States’ means the
23 offense is committed under circumstances amounting to piracy;

24 “(55) ‘President-elect’ and ‘Vice-President-elect’ means such
25 persons as are the apparently successful candidates for the offices
26 of President and Vice President, respectively, as ascertained from
27 the results of the general elections held to determine the electors
28 of President and Vice President in accordance with sections 1
29 and 2, title 3, United States Code;

30 “(56) ‘process’ means process, demand, or order authorized by
31 law for the interception, seizure, production, copying, discovery,
32 or examination of a communication, record, document, or thing;

33 “(57) ‘public servant’ means an officer or employee of a govern-
34 ment, including a legislator, judge and any person participating
35 as juror, advisor, consultant licensee or contractor or otherwise,
36 in performing a governmental function;

37 “(58) ‘receiving Federal financial assistance jurisdiction of
38 the United States’ means the offense involves (i) a building, in-
39 habited structure, or public facility which is in whole or in part

1 owned, possessed, or used by or leased to, any organization receiv-
2 ing Federal financial assistance, (ii) a government receiving
3 Federal financial assistance, or (iii) a program receiving Fed-
4 eral financial assistance;

5 “(59) ‘recklessly’ and variants of the term designate the stand-
6 ard prescribed in section 1-2A1;

7 “(60) ‘serious bodily injury’ means bodily injury which creates
8 a substantial risk of death or which causes serious, permanent dis-
9 figurement, extreme physical pain, or loss or extended impairment
10 of the function of any bodily member or organ;

11 “(61) ‘solicit’ has the meaning prescribed in section 1-2A3;

12 “(62) ‘special aerospace jurisdiction’ means or applies to (i)
13 any aircraft or spacecraft of the United States, during flight or
14 while in outer space; (ii) any aircraft or spacecraft during take-
15 off, launch, flight or landing within the United States or the
16 Canal Zone; (iii) any aircraft or spacecraft in flight which, at
17 the end of such flight lands in the United States or the Canal Zone
18 and (A) was scheduled or intended so to land in the United States
19 or the Canal Zone, or (B) commenced such flight by takeoff or
20 launch in the United States or the Canal Zone; (iv) any aircraft
21 or spacecraft which lands in the United States or the Canal Zone
22 at the end of a flight as a result of, or in the course of conduct by
23 a person on board which conduct, if otherwise within or by a
24 person subject to the special aerospace jurisdiction of the United
25 States, would be an offense, from the time such conduct first occurs
26 or commences; (v) any other aircraft or spacecraft if and to the
27 extent provided by treaty or other international agreement having
28 the force of a treaty; (vi) any Federal public servant or citizen
29 of the United States present in outer space; or (vii) any other
30 person present in outer space, if and to the extent provided by
31 treaty or other international agreement having the force of a
32 treaty;

33 “(63) ‘special maritime and territorial jurisdiction’ means (i)
34 the high seas, any other waters within the admiralty and maritime
35 jurisdiction of the United States and out of the jurisdiction of
36 any particular state, and any vessel belonging in whole or in part
37 to the United States, citizen of the United States, or a corporation
38 created by or under a Federal or state statute, when such vessel is
39 within the admiralty and maritime jurisdiction of the United
40 States and out of the jurisdiction of any particular state; (ii) any

1 vessel registered, licensed, or enrolled under the laws of the
2 United States, and on a voyage upon the waters of any of the
3 Great Lakes or any of the waters connecting them, or upon the
4 Saint Lawrence River where such river constitutes the Inter-
5 national Boundary Line; (iii) any lands reserved or acquired for
6 the use of the United States, and under the exclusive or concur-
7 rent jurisdiction of the United States, or any place purchased or
8 otherwise acquired by the United States by consent of the legisla-
9 ture of the state in which the same shall be, for the erection of a
10 fort, magazine, arsenal, dockyard, or other needful building; (iv)
11 any unorganized territory or possession of the United States;
12 (v) any island, rock, or key containing deposits of guano, which
13 may, at the discretion of the President, be considered as apper-
14 taining to the United States; or (vi) any structure attached to the
15 continental shelf and out of the jurisdiction of any particular
16 state;

17 “(64) ‘special maritime, territorial and aerospace jurisdiction
18 of the United States’ or ‘special jurisdiction’ means the offense is
19 committed within the special maritime and territorial or special
20 aerospace jurisdiction;

21 “(65) ‘state’ means the states of the United States and Puerto
22 Rico, the Canal Zone, the District of Columbia, American Samoa,
23 Guam, the Virgin Islands, Johnston Island, Midway Island, Wake
24 Island, Kingman’s Reef, and any other territory or possession
25 of the United States;

26 “(66) ‘structure’ means any building or vehicle adapted for
27 overnight accommodation of persons, the carrying on of busi-
28 ness, or the engaging in of other activity by a human being;

29 “(67) ‘traffics’ means produces or manufactures; sells, trans-
30 fers, dispenses, or otherwise disposes of to another person; pos-
31 sesses or receives with intent to sell, transfer, dispense, or other-
32 wise dispose of to another person; or imports or exports; and in
33 the case of a drug, includes prescribes not in the course of profes-
34 sional practice;

35 “(68) ‘United States’ includes all states and all places and
36 waters, continental or insular, subject to the territorial jurisdiction
37 of the United States, except the Canal Zone; when not used in a
38 territorial sense, the term means the government of the United
39 States;

“(69) ‘United States mails jurisdiction of the United States’ means (i) the offense is against a United States mail facility or (ii) the United States mails or a facility of the United States Postal Service is used in the commission of the offense;

“(70) ‘vehicle’ means any mode or form of transportation, including a motor vehicle, aircraft, spacecraft, train, ship, boat, canoe, cart, trailer, bicycle, horse, sled, or snowmobile; and

“(71) ‘violation’ means an offense for which a sentence to a term of imprisonment not in excess of thirty days is authorized, or an offense for which no sentence of imprisonment is authorized.

“§ 1-1A5. Classification of Offenses

“(a) FELONIES.—Felonies defined by this code are classified into the following five categories:

“(1) Class A felonies;

“(2) Class B felonies;

“(3) Class C felonies;

“(4) Class D felonies; and

“(5) Class E felonies.

“(b) MISDEMEANORS.—Misdemeanors are not further classified.

“(c) VIOLATIONS.—Violations are not further classified.

“(d) COMPOUND OFFENSE.—Offenses are graded by simple classification or by cross reference to the classification of designated compound offenses. If a designated offense is committed as an integral part of, including immediate flight from, the commission of another offense, the compound offense is an offense of the classification of the designated offense or, where appropriate, a lesser included offense of the designated offense.

“§ 1-1A6. Territorial Jurisdiction

“(a) GENERAL.—Except as otherwise expressly provided, this code is applicable to offenses defined by any Act of Congress except the Uniform Code of Military Justice and the District of Columbia Code. Federal jurisdiction to investigate or to prosecute an offense in a court of the United States exists as provided in connection with the definition of the offense. The existence of Federal jurisdiction is not an element of the offense. Federal jurisdiction may rest on more than one jurisdictional basis. The existence of multiple jurisdictional bases for an offense does not increase the number of offenses committed.

“(b) INDIAN COUNTRY.—This code is applicable to offenses committed in Indian country to the extent that there is Federal jurisdiction under the Indian Affairs Crimes Act 1973.

“(c) CANAL ZONE.—This code is applicable in the Canal Zone as

1 provided in the Canal Zone Code. It is also applicable, as there
2 provided, to the corridor over which the United States exercises
3 jurisdiction under to the provisions of Article IX of the General
4 Treaty of Friendship and Cooperation between the United States of
5 America and the Republic of Panama, signed March 2, 1936, to the
6 extent that such application to the corridor is consistent with the
7 nature of the rights of the United States in the corridor as provided
8 by the treaty.

9 “(d) JURISDICTION OVER INCLUDED OFFENSE.—If Federal juris-
10 diction over an offense exists, Federal jurisdiction over an included
11 offense exists.

12 “(e) JURISDICTION OVER ATTEMPT, SOLICITATION, OR CONSPIRACY.—
13 Federal jurisdiction exists with respect to criminal attempt, criminal
14 solicitation, or criminal conspiracy when a circumstance giving rise
15 to Federal jurisdiction over such an offense has occurred or would
16 occur if the target offense were committed.

17 “(f) JURISDICTION OVER COMPOUND OFFENSE.—If Federal juris-
18 diction over an offense exists, Federal jurisdiction over a compound
19 offense or a lesser included offense of such compound offense exists.

20 “(g) FEDERAL JURISDICTION NOT PRE-EMPTIVE.—Except as other-
21 wise explicitly provided, the existence of Federal jurisdiction over
22 an offense shall not prevent any state or local government from
23 exercising jurisdiction to enforce its own laws applicable to the con-
24 duct.

25 “§ 1-1A7. Extraterritorial Jurisdiction

26 “Except as otherwise expressly provided, extraterritorial jurisdic-
27 tion over an offense exists when :

28 “(a) the victim is a Federal public servant ;

29 “(b) the property which is the subject of the offense is owned
30 by or in the custody or control of the United States or is being
31 manufactured, constructed, or stored for the United States ;

32 “(c) the offense is committed by a national of the United States,
33 except that this section is not applicable if the conduct is not
34 prohibited under the law of the territorial jurisdiction in which
35 it is committed ;

36 “(d) the offense is (1) treason, espionage, or sabotage against
37 the United States ; (2) trafficking in drugs destined for eventual
38 distribution or sale in the United States ; (3) forgery or counter-
39 feiting, uttering of forged copies or counterfeits, or issuance
40 without authority of the seals, currency, instruments of credit,

1 stamps, passports, or public documents issued by the United
2 States; (4) perjury or a false statement in an official proceeding
3 of the United States; or (5) any form of fraud against the United
4 States;

5 “(e) the person participates outside the United States in an
6 offense committed in whole or in part within the United States,
7 or the offense constitutes a criminal attempt, criminal solicitation,
8 or criminal conspiracy to commit an offense within the United
9 States;

10 “(f) the offense involves the entry of persons or property into
11 the United States; or

12 “(g) such jurisdiction is provided by treaty.

13 **“§ 1-1A8. Assimilated Offenses**

14 “(a) **WHEN ASSIMILATED.**—A person is guilty of an offense if he
15 engages in conduct within an enclave which, if engaged in within the
16 jurisdiction of the state or local government in which the enclave is
17 located, would be punishable as an offense under the state or local law
18 then in force.

19 “(b) **GRADING.**—A person prosecuted and convicted under state or
20 local law assimilated under subsection (a) shall be sentenced under
21 this code. The offense is:

22 “(1) a Class A felony if the same or a substantially equivalent
23 offense is so designated in this code or if the maximum term of
24 imprisonment authorized by the state or local law is death or 30
25 years or more or if the death sentence or life imprisonment is
26 authorized;

27 “(2) a Class B felony if the same or a substantially equivalent
28 offense is so designated in this code or if the maximum term of
29 imprisonment authorized by the state or local law is 20 years or
30 more but less than 30 years;

31 “(3) a Class C felony if the same or a substantially equivalent
32 offense is so designated in this code or if the maximum term of
33 imprisonment authorized by the state or local law is 10 years or
34 more but less than 20 years;

35 “(4) a Class D felony if the same or a substantially equivalent
36 offense is so designated in this code or if the maximum term of
37 imprisonment authorized by the state or local law is 6 years or
38 more but less than 10 years;

39 “(5) a Class E felony if the same or a substantially equivalent
40 offense is so designated in this code or if the maximum term of

1 imprisonment authorized by the state or local law is 1 year or
2 more but less than 6 years;

3 “(6) a misdemeanor if the same or a substantially equivalent
4 offense is so designated in this code or if the maximum term of
5 imprisonment authorized by the state or local law is 6 months
6 or more but less than 1 year; or

7 “(7) a violation if the same or a substantially equivalent of-
8 fense is so designated in this code or if the maximum term of im-
9 prisonment authorized by the state or local law is less than 6
10 months or if no term of imprisonment is authorized.

11 The term of imprisonment or fine imposed shall not exceed the
12 maximum authorized by the state or local law.

13 “(c) DEFINITION.—As used in this section, ‘enclave’ means a place
14 within the special maritime, territorial, and aerospace jurisdiction
15 the United States.

16 **“Chapter 2.—PRINCIPLES OF CRIMINAL LIABILITY**

“Sec.

“1-2A1. Culpability.

“1-2A2. Causal Relationship Between Conduct and Result.

“1-2A3. Criminal Solicitation.

“1-2A4. Criminal Attempt.

“1-2A5. Criminal Conspiracy.

“1-2A6. Complicity.

“1-2A7. Organization Criminal Liability.

“1-2A8. Personal Criminal Liability for Conduct on Behalf of Organization.

17 **“§ 1-2A1. Culpability**

18 **“(a) KINDS OF CULPABILITY.—A person engages in conduct :**

19 “(1) ‘culpably’ with respect to elements of an offense when he
20 acts intentionally, knowingly, recklessly, or with criminal negli-
21 gence with respect to the element;

22 “(2) ‘intentionally’ with respect to his conduct or to a result
23 of it when it is his conscious objective to engage in the conduct or
24 cause the result;

25 “(3) ‘knowingly’ with respect to his conduct or to attendant
26 circumstances when he is aware of the quality of his conduct or
27 that those circumstances probably exist. A person acts knowingly
28 with respect to a result of his conduct when he is aware that his
29 conduct will probably cause the result;

30 “(4) ‘recklessly’ with respect to attendant circumstances or the
31 result of his conduct when he acts in disregard of his awareness
32 of a risk that the circumstances exist or that his conduct will cause
33 the result. His disregard of that risk must involve a gross devia-
34 tion from the standard of care that a reasonable person would ob-
35 serve in his situation; or

1 “(5) with ‘criminal negligence’ with respect to attendant cir-
 2 cumstances or the result of his conduct when he fails to be aware
 3 of a risk that the circumstances exist or that his conduct will cause
 4 the result. His failure to perceive that risk must involve a gross
 5 deviation from the standard of care that a reasonable person would
 6 observe in his situation.

7 “(b) REQUIREMENTS OF CULPABILITY.—Except as otherwise pro-
 8 vided, a person does not commit an offense unless he acts culpably
 9 with respect to each element of the offense. If the statute or section de-
 10 fining an offense does not prescribe any culpability with respect to some
 11 or all of the elements of the offense, culpability is nevertheless required
 12 unless;

13 “(1) the statute or section provides that a person may be guilty
 14 without culpability as to those elements;

15 “(2) the statute or section provides that the offense is a violation
 16 without including a requirement of culpability as those elements;
 17 or

18 “(3) an intent to impose liability without culpability as to those
 19 elements is otherwise present.

20 “(c) CULPABILITY NOT REQUIRED.—Unless otherwise expressly pro-
 21 vided, culpability is not required under a statute or section with respect
 22 to.

23 “(1) any fact which is a basis for Federal jurisdiction or venue;

24 “(2) any fact which is a basis for grading;

25 “(3) any element as to which it is expressly stated that it must
 26 ‘in fact’ exist; or

27 “(4) the legal result, under an offense defined outside this Code,
 28 that the conduct constitutes an offense or is prohibited by law.

29 “(d) APPLICATION.—If the statute or section :

30 “(1) defining an offense prescribes the kind of culpability that
 31 is sufficient for its commission, without distinguishing among the
 32 elements of such offense, that kind of culpability applies to every
 33 element of the offense, unless a contrary intent is present. If,
 34 however, the required culpability is ‘intentionally’ or ‘knowingly’,
 35 the culpability required as to attendant circumstances specified in
 36 the definition of the offense is ‘recklessly;’ or

37 “(2) provides that criminal negligence suffices to establish
 38 an offense, the element is also established if a person acts inten-
 39 tionally, knowingly, or recklessly. If recklessness suffices, the ele-

ment is also established if a person acts intentionally or knowingly. If knowingly suffices, the element is also established if a person acts intentionally.

“§ 1-2A2. Causal Relationship Between Conduct and Result

“Conduct is a cause of a result when it is an antecedent but for which the result would not have occurred.

“§ 1-2A3. Criminal Solicitation

“(a) OFFENSE.—A person is guilty of criminal solicitation if, with intent that another person engage in conduct constituting, in fact, a crime, he requests, commands, induces, or otherwise endeavors to persuade another person to engage in conduct constituting, in fact, crime.

“(b) ATTEMPT PRECLUDED.—Section 1-2A4 (Criminal Attempt) is inapplicable under this section.

“(c) DEFENSE PRECLUDED.—It is not a defense that the person solicited could not be convicted of the crime because of lack of responsibility or culpability, or other incapacity, bar to prosecution, defense, or other reason.

“(d) DEFENSE.—It is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal conduct and culpability, the defendant prevented the commission of the crime which he solicited. A renunciation is not ‘voluntary and complete’ if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or his accomplice, or which makes more difficult the consummate of conduct constitutes, in fact, the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim or another but similar objective.

“(e) GRADING.—Criminal solicitation is an offense of the class next below that of the crime solicited.

“§ 1-2A4. Criminal Attempt

“(a) OFFENSE.—A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct constituting, in fact, a substantial step toward commission of such crime.

“(b) SOLICITATION PRECLUDED.—Section 1-2A3 (Criminal Solicitation) is inapplicable under this section.

“(c) DEFENSE PRECLUDED.—It is not a defense that it was impossible for the defendant to commit the crime, if the crime could have been committed had the factual and legal attendant circumstances spec-

1 ified in the statute defining the crime been as the defendant believed
2 them to be.

3 “(d) DEFENSE.—It is an affirmative defense that, under circum-
4 stances manifesting a voluntary and complete renunciation of his
5 criminal conduct and culpability the defendant avoided the commis-
6 sion of the crime attempted by abandoning his criminal effort and, if
7 mere abandonment was insufficient to accomplish such avoidance, by
8 taking further and affirmative steps which prevented the commission of
9 such crime. A renunciation is not ‘voluntary and complete’ if it is mo-
10 tivated in whole or in part by (1) a belief that a circumstance exists
11 which increases the probability of detection or apprehension of the de-
12 fendant or his accomplice, or which makes more difficult the consum-
13 mation of the conduct constituting, in fact, the crime, or (2) a de-
14 cision to postpone the criminal conduct until another time or to sub-
15 stitute another victim or another but similar objective.

16 “(e) SUBSTANTIAL STEP.—Conduct is not a substantial step under
17 subsection (a) unless it is corroborative of the person’s intent to en-
18 gage in conduct constituting, in fact, a crime. Corroborative conduct
19 includes:

20 “(1) lying in wait, searching for, or following the contem-
21 plated victim;

22 “(2) enticing or seeking to entice the contemplated victim to
23 go to the place contemplated for engaging in the conduct consti-
24 tuting, in fact, the crime;

25 “(3) reconnoitering the place where the conduct constituting,
26 in fact, the crime is to be engaged in;

27 “(4) entry of a structure, or enclosure in which the conduct con-
28 stituting, in fact, the crime is to be engaged in;

29 “(5) possession of material to be employed in the conduct con-
30 stituting, in fact, the crime, which is adapted for such use under
31 the circumstances;

32 “(6) possession, collection, or fabrication of materials to be
33 employed in the conduct constituting, in fact, the crime, at or
34 near the place contemplated for engaging in the conduct con-
35 stituting, in fact, the crime where such possession, collection, or
36 fabrication serves no other intent of the person under the circum-
37 stances; or

38 “(7) soliciting a person not subject, in fact, to justice to engage
39 in conduct constituting an element of the crime.

1 “(f) GRADING.—Criminal attempt is an offense of the same class as
2 the crime attempted, except that an attempt to commit a Class A
3 felony is a Class B felony.

4 **“§ 1-2A5. Criminal Conspiracy**

5 “(a) OFFENSE.—A person is guilty of criminal conspiracy if he
6 knowingly agrees with one or more persons to enter into a relationship
7 having as its objective or objectives to engage in or cause the perform-
8 ance of conduct constituting, in fact, one or more crimes, and he or one
9 or more of such persons engages in or causes the performance of
10 conduct to effect an objective or objectives of the relationship.

11 “(b) ATTEMPT PRECLUDED.—Section 1-2A4 (Criminal Attempt) is
12 inapplicable under this section.

13 “(c) DEFENSE PRECLUDED.—It is not a defense that one or more of
14 the persons with whom the defendant agreed to enter into such a
15 relationship could not be convicted of the crime because of lack of
16 responsibility or culpability, or other incapacity, bar to prosecution,
17 defense, or other reason.

18 “(d) DEFENSE.—It is an affirmative defense that the defendant
19 thwarted the realization of the objective or objectives of the rela-
20 tionship by notifying a law enforcement officer of its existence, under
21 circumstances manifesting a voluntary and complete renunciation of
22 his criminal conduct and intent. A renunciation is not ‘voluntary and
23 complete’ if it is motivated in whole or in part by (1) a belief that a
24 circumstance exists which increases the probability of detection or
25 apprehension of the defendant or his co-conspirator, or which makes
26 more difficult the consummation of the conduct constituting, in fact, the
27 crime, or (2) a decision to postpone the criminal conduct until another
28 time or to substitute another victim or another but similar objective.

29 “(e) PARTIES.—If a person knows or could reasonably expect that
30 one with whom he agrees to enter into a relationship included in sub-
31 section (a) has agreed or will agree with one or more other persons to
32 enter into such a relationship in reference to such conduct, he shall be
33 deemed to have agreed to enter into the same relationship with such
34 person or persons, whether or not he knows the other person’s or per-
35 sons’ identity.

36 “(f) OBJECTIVES.—If a person knows or could reasonably expect
37 that one with whom he agrees to enter into a relationship included in
38 subsection (a) has agreed or will agree with one or more other persons
39 to enter into a relationship having as its objective or objectives engag-
40 ing in or causing the performance of such conduct or other reasonably

1 related conduct, he shall be deemed to have entered into the same rela-
2 tionship with such person or persons. Conduct is not reasonably related
3 where it is merely similar or where it merely embraces some of the
4 same persons.

5 “(g) DURATION.—A criminal conspiracy continues until its objective
6 or objectives are accomplished, frustrated, or abandoned. A conspiracy
7 shall be deemed to have been abandoned if no conduct by one or more
8 of such persons to effect an objective or objectives of such relationship
9 is engaged in or caused during the applicable period of limitations.

10 “(h) GRADING.—Criminal conspiracy is an offense of the same class
11 as the highest offense which was an objective of the relationship,
12 except that a conspiracy to commit a Class A felony is a Class B felony.

13 **“§ 1-2A6. Complicity**

14 “(a) (1) GENERAL.—A person is guilty of an offense based upon the
15 conduct of another person when, with knowledge that conduct consti-
16 tuting, in fact, an offense is to be committed, he engages in conduct
17 which aids the other person to commit it.

18 “(2) INNOCENT AGENT.—A person is guilty of an offense based upon
19 the conduct of another person when, acting with the kind of culpabil-
20 ity otherwise required for the commission of the offense, he causes
21 another person to engage in such conduct, even though such person
22 could not be convicted of the offense because of lack of responsibility or
23 culpability or other incapacity bar to prosecution, defense, or other
24 reason.

25 “(3) CO-CONSPIRATOR.—A person is guilty of an offense based upon
26 the conduct of another person when he is in a conspiracy and the con-
27 duct was committed by a co-conspirator in furtherance of the con-
28 spiracy and was a reasonably foreseeable consequence of it.

29 “(b) DEFENSE PRECLUDED. It is not a defense, when the liability of
30 the defendant is based upon the conduct of another person, that:

31 “(1) the defendant does not belong to the class of persons who
32 by the definition of the offense are the only persons capable of
33 committing it directly; or

34 “(2) the person for whose conduct the defendant is being held
35 liable could not be convicted of the offense because of lack of
36 responsibility or culpability, or other incapacity, bar to prosecu-
37 tion, defense, or other reason.

38 **“§ 1-2A7. Organization Criminal Liability**

39 “(a) LIABILITY DEFINED.—An organization is guilty of:

40 “(1) any offense consisting of conduct engaged in by an agent
41 of the organization within the scope of his employment; or

1 “(2) any offense for which a human being may be convicted
2 without proof of culpability, consisting of conduct engaged in by
3 an agent of the organization within the scope of his employment.

4 “(b) **DEFENSE PRECLUDED.**—It is not a defense that a person upon
5 whose conduct liability of the organization for an offense is based
6 could not be convicted of the offense because of lack of responsibility
7 or other incapacity, bar to prosecution, defense, or other reason.

8 **“§ 1-2A8. Personal Criminal Liability for Conduct on Behalf of**
9 **Organization**

10 “(a) **CONDUCT ON BEHALF OF ORGANIZATION.**—A person is crimi-
11 nally liable for any conduct which he performs or causes to be per-
12 formed in the name of an organization or in its behalf to the same
13 extent as if the conduct were performed or caused to be performed in
14 his own name or behalf.

15 “(b) **LIABILITY FOR CONDUCT OF ORGANIZATION.**—When a person is
16 convicted of an offense based on criminal liability for conduct of
17 an organization, he is subject to the sentence authorized when a
18 human being is convicted of that offense.

19 **“Chapter 3.—BARS AND DEFENSES TO CRIMINAL**
20 **LIABILITY**

“Subchapter

“A. General Provisions.

“B. Bars to Prosecution.

“C. Defenses.

21 **“Subchapter A.—General Provisions**

“Sec.

“1-3A1. General Principles.

22 **“§ 1-3A1. General Principles**

23 “(a) **LIMITATION.**—The defenses or bars to criminal liability set
24 forth in this chapter only constitute a defense or bar to prosecution to
25 the extent defined in this chapter.

26 “(b) **NOT EXCLUSIVE.**—Defenses or bars to criminal liability set forth
27 in this chapter are not exclusive.

28 “(c) **STATE PROSECUTION.**—Defenses to criminal liability set forth in
29 section 1-3C3 (Execution of Public Duty) and 1-3C4 (Defense of Per-
30 son, Property or Prevention of Criminal Conduct) are available in
31 a state court proceeding to a Federal public servant, or a person act-
32 ing at his direction, based on conduct performed in the course of such
33 public servant’s official duties.

34 **“Subchapter B.—Bars to Prosecution**

“Sec.

“1-3B1. Time Limitations.

“1-3B2. Entrapment.

“1-3B3. Immaturity.

1 **“§ 1-3B1. Time Limitations**

2 “(a) **BAR.**—It is a bar to prosecution that the prosecution was com-
3 menced after the expiration of a applicable period of limitations.

4 “(b) **MURDER.**—A prosecution for murder may be commenced at any
5 time.

6 “(c) **OTHER OFFENSES.**—Except as otherwise provided, prosecutions
7 for offenses other than murder are subject to the following periods of
8 limitation:

9 “(1) a prosecution for a Class A felony must be commenced
10 within ten years after it is committed;

11 “(2) a prosecution for any other crime must be commenced
12 within five years after it is committed; and

13 “(3) a prosecution for a violation must be commenced within
14 one year after it is committed.

15 “(d) **EXTENSIONS.**—If the period prescribed in subsection (c) has
16 expired, a prosecution may nevertheless be commenced for:

17 “(1) an offense an element of which is either fraud or breach
18 of fiduciary obligation within one year after discovery of
19 the offense by an aggrieved person or by a person who has a legal
20 duty to represent an aggrieved person and who is himself not an
21 accomplice in the offense, but in no case shall this provision ex-
22 tend the period of limitation otherwise applicable by more than
23 three years;

24 “(2) an offense based on official conduct in office by a public
25 servant at any time when the defendant is a public servant or
26 within two years after he ceases to be such public servant, but in
27 no case shall this provision extend the period of limitation other-
28 wise applicable by more than three years; or

29 “(3) an offense where a timely complaint, indictment, or in-
30 formation is dismissed for any error, defect, insufficiency, or irreg-
31 ularity provided that the new prosecution is commenced within six
32 months of the date of dismissal or, if no regular grand jury is in
33 session in the appropriate jurisdiction when such indictment or
34 information is dismissed, within six months of the date when the
35 next regular grand jury is convened.

36 “(e) **SUSPENSION OF LIMITATIONS.**—The period of limitation does
37 not run:

38 “(1) when the defendant is continuously absent from the
39 United States or has no reasonably ascertainable place of abode or
40 work within the United States; or

1 “(2) when a prosecution against the defendant for the same
2 conduct has been commenced and is pending.

3 “(f) **TIME OF OFFENSE.** An offense is committed either when every
4 element occurs or, if an intent to prohibit a continuing course of con-
5 duct is present, at the time the course of conduct or the defend-
6 ant’s complicity in such conduct is terminated. Time starts to run on
7 the day after the offense is committed.

8 “(g) **NO BAR.**—Notwithstanding that the period of limitation has
9 expired, a prosecution is timely commenced ;

10 “(1) for an offense included in the offense charged, if as to the
11 offense charged the period of limitation has not expired or there
12 is no such period, and there is, after the evidence on either side
13 is closed at the trial, sufficient evidence to sustain a conviction of
14 the offense charged ; or

15 “(2) for any offense as to which the defendant enters a plea of
16 guilty or nolo contendere.

17 “(h) **WARTIME SUSPENSION.**—When the United States is at war
18 under a declaration of the Congress, the running of any statute of
19 limitations shall be suspended until three years after the termination
20 of hostilities upon proclamation by the President or concurrent reso-
21 lution of Congress.

22 “(i) **SPECIAL TIME LIMITATIONS.**—(1) concealment of assets of a
23 bankrupt or other debtor is a continuing offense until the debtor shall
24 have received a discharge or a discharge has been denied. The period of
25 limitations shall not begin to run until such discharge or denial of
26 discharge.

27 “(2) No proceeding for criminal contempt of a court based on mis-
28 conduct of every person in its presence or so near to it as to obstruct
29 the administration of justice shall be brought against any person unless
30 commenced within one year from the date of the misconduct. No
31 other proceeding for criminal contempt of a court based on misconduct
32 of any person shall be brought against any person unless commenced
33 within five years from the date of the misconduct.

34 **“§ 1-3B2. Entrapment**

35 “(a) **BAR.**—It is a bar to prosecution that the defendant was en-
36 trapped into engaging in prohibited conduct.

37 “(b) **OCCURRENCE.**—Entrapment occurs when a law enforcement offi-
38 cer or a person requested by a law enforcement officer to assist him
39 induces or encourages a person to engage in prohibited conduct, using
40 such methods of inducement or encouragement as create a substantial

1 risk that the conduct would be committed by persons other than those
 2 who are ready to commit it. Conduct merely affording a person an
 3 opportunity to engage in prohibited conduct does not constitute entrap-
 4 ment. A risk is less substantial where a person has previously engaged
 5 in similarly prohibited conduct and such conduct is known to such offi-
 6 cer as a person assisting him.

7 “(c) NO BAR.—The bar to prosecution afforded by this section is
 8 unavailable when causing or threatening serious bodily injury is the
 9 prohibited conduct.

10 **“§ 1-3B3. Immaturity**

11 “It is a bar to prosecution as an adult that at the time of the com-
 12 mission of the offense the defendant was:

13 “(a) less than fifteen years old; or

14 “(b) less than sixteen years old if the offense charged is an
 15 offense other than murder, maiming, aggravated assault, aggra-
 16 vated kidnapping, rape, aggravated arson, armed burglary, or
 17 armed robbery.

18 **“Subchapter C.—Defenses**

“Sec.

“1-3C1. Intoxication.

“1-3C2. Mental Illness or Defect.

“1-3C3. Execution of Public Duty.

“1-3C4. Defense of Person Property or Prevention of Criminal Conduct.

“1-3C5. Ignorance or Mistake of Fact.

“1-3C6. Ignorance or Mistake of Law.

“1-3C7. Duress.

“1-3C8. Consent.

19 **“§ 1-3C1. Intoxication**

20 “(a) DEFENSE.—It is a defense that when a defendant engages in
 21 conduct which would otherwise constitute an offense, an element of
 22 the offense is negated as a result of intoxication.

23 “(b) DEFINITION.—As used in this section, ‘intoxication’ means a
 24 disturbance of mental or physical capacities resulting from the intro-
 25 duction of alcohol, drugs, or other similar substances into the body.

26 **“§ 1-3C2. Mental Illness or Defect**

27 “It is a defense that when a defendant engages in conduct which
 28 would otherwise constitute an offense, as a result of mental illness or
 29 defect he lacks substantial capacity to appreciate the character of his
 30 conduct or to control his conduct. ‘Mental illness or defect’ does not
 31 include an abnormality manifested only by repeated criminal or other-
 32 wise antisocial conduct.

1 **“§ 1-3C3. Execution of Public Duty**

2 “(a) **AUTHORIZED BY LAW.**—It is a defense that conduct which
3 would otherwise constitute an offense is engaged in by a public servant
4 in the course of his official duties and that he believes in good faith
5 that the conduct is required or authorized by law unless he acts in
6 reckless disregard of the risk that the conduct was not required as
7 authorized by law.

8 “(b) **DIRECTED BY A PUBLIC SERVANT.**—It is a defense that conduct
9 which would otherwise constitute an offense is engaged in by a person
10 who has been requested by a public servant to assist him and who is
11 carrying out the specific request of such public servant, unless such
12 person acts in reckless disregard of the risk that the conduct was not
13 required or authorized by law.

14 **“§ 1-3C4. Defense of Person or Property**

15 “(a) **SELF-DEFENSE.**—It is a defense that the defendant’s conduct,
16 including the use of proportionate force, is reasonable and is believed
17 in good faith to be necessary to defend himself against immediate and
18 unreasonable use of force by another person. Excessive self-defense is
19 justifiable if the defendant has exceeded the limits of defense by reason
20 of consternation, fear, or fright, under circumstances in which a rea-
21 sonable person might have engaged in such conduct.

22 “(b) **DEFENSE OF OTHERS.**—It is a defense that the defendant’s con-
23 duct, including the use of proportionate force, is reasonable and is
24 believed in good faith to be necessary to defend a third person against
25 immediate and unreasonable use of force by another person if the
26 person defended appears to be justified in defending himself. Exces-
27 sive defense of another is justifiable if the defendant has exceeded the
28 limits of defense by reason of consternation, fear, or fright, under
29 circumstances in which a reasonable person might have engaged in
30 such conduct.

31 “(c) **DEFENSE OF PROPERTY.**—It is a defense that the defendant’s
32 conduct, including the use of proportionate force, is reasonable and is
33 believed in good faith to be necessary to prevent or terminate an entry
34 onto property without consent or to prevent the taking, retaining, or
35 damaging of property without consent. Excessive defense of property

1 is justifiable if the defendant has exceeded the limits of defense by
 2 reason of consternation, fear, or fright, under circumstances in which
 3 a reasonable person might have engaged in such conduct.

4 “(d) PREVENTION OF CRIMINAL CONDUCT.—It is a defense that the
 5 defendant’s conduct, including the use of proportionate force, is reason-
 6 able and was believed in good faith to be necessary to prevent or termi-
 7 nate conduct constituting, in fact, and offense. Excessive prevention
 8 is justifiable if the defendant has exceeded the limits of prevention by
 9 reason of consternation, fear, or fright, under circumstances in which
 10 a reasonable person might have engaged in such conduct.

11 “(e) OTHER CONDUCT INCLUDING THE USE OF FORCE.—It is a defense
 12 that the defendant’s conduct in the use of proportionate force on
 13 another person is reasonable and believed in good faith to be neces-
 14 sary when the defendant is:

15 “(1) a parent, guardian, or person responsible for the care and
 16 supervision, in general or for a special purpose, of an unemanci-
 17 pated minor;

18 “(2) a guardian or other person responsible for the care and
 19 supervision of an incompetent person, or a person acting at the
 20 direction of the guardian or other person responsible;

21 “(3) a person responsible for the maintenance of order in a
 22 vehicle or in a place where others are assembled, or a person acting
 23 at the direction of the person responsible;

24 “(4) a duly licensed physician, or a person acting at his
 25 direction;

26 “(5) a person seeking to prevent the death or serious bodily
 27 injury of another person who is about to commit suicide or suffer
 28 serious bodily injury; or

29 “(6) any other similar person.

30 Excessive use of such force is justifiable if the defendant has ex-
 31 ceeded the limits of the use of such force by reason of consternation,
 32 fear or fright, under circumstances in which a reasonable person might
 33 have engaged in such conduct.

34 **“§ 1-3C5. Ignorance or Mistake of Fact**

35 “(a) DEFENSE.—It is a defense that when a defendant engages in
 36 conduct which would otherwise constitute an offense.

37 “(1) he is ignorant or mistaken in good faith about a matter of
 38 fact and the ignorance or mistake negates the kind of culpability
 39 required for commission of the offense; or

1 “(2) he believes in good faith that the factual situation is such
2 that his conduct is necessary for any of the purposes which would
3 establish, in fact, a defense under this chapter.

4 “(b) AFFIRMATIVE DEFENSE.—A mistaken belief that facts which
5 constitute an affirmative defense exist is not a defense.

6 **“§ 1-3C6. Ignorance or Mistake of Law**

7 “(a) DEFENSE.—It is a defense that when a defendant engages in
8 conduct which would otherwise constitute an offense he is ignorant
9 or mistaken in good faith about a matter of law and the ignorance or
10 mistake negates the kind of culpability required for commission of the
11 offense.

12 “(b) AFFIRMATIVE DEFENSE.—

13 “(1) It is an affirmative defense that the defendant’s conduct in
14 fact conformed with an official statement of the law, afterward
15 determined to be invalid or erroneous, contained in :

16 “(i) a statute ; or

17 “(ii) a decision of the United States Supreme Court ; or

18 “(iii) a decision of a United States Court of Appeals.

19 “(2) It is an affirmative defense that the defendant’s conduct
20 in fact conformed with an official statement of the law, afterward
21 determined to be invalid or erroneous, contained in :

22 “(i) a judicial decision entered in a proceeding in which
23 the defendant was a party ;

24 “(ii) an administrative decision entered in a proceeding in
25 which the defendant was a party, or an administrative grant
26 of permission to the defendant ; or

27 “(iii) an official, written interpretation issued by the head
28 of a government agency, or his delegate, charged by law with
29 responsibility for administration of the law defining the
30 offense,

31 if he acted in reasonable reliance on such statement of the law
32 and in a good faith belief that his conduct did not constitute
33 an offense.

34 **“§ 1-3C7. Duress**

35 “(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense that when
36 a defendant engages in conduct which would otherwise constitute an
37 offense he is compelled to do so by threat of imminent death or serious
38 bodily injury to himself or another person or because he was com-
39 pelled to do so by force. Compulsion exists only if the force, threat,
40 or circumstances are such as would have prevented a person of rea-

1 sonable firmness in the person's situation from resisting the pressure.

2 “(b) DEFENSE PRECLUDED.—The affirmative defense set forth in
3 this section is not available:

4 “(1) to a person for a homicide committed intentionally or
5 knowingly;

6 “(2) to a person who recklessly placed himself in a situation
7 in which it was reasonably probable that he would be subjected
8 to duress; or

9 “(3) to a person who with criminal negligence placed himself
10 in a situation in which it was reasonably probable that he would
11 be subjected to duress, whenever criminal negligence suffices to
12 establish culpability for the offense charged.

13 **“§ 1-3C8. Consent**

14 “(a) DEFENSE.—It is a defense that when a defendant engages in
15 conduct which would otherwise constitute an offense against another
16 person or his property that such person consented to the conduct and
17 that an element of the offense is negated as a result of such consent.

18 “(b) CONSENT TO BODILY INJURY.—When conduct is an offense
19 because it causes or threatens bodily injury, consent to such conduct
20 or to the infliction of such injury is a defense if:

21 “(1) neither the injury inflicted nor the injury threatened
22 is such as to threaten life or serious bodily injury;

23 “(2) the conduct and the injury are reasonably foreseeable haz-
24 ards of joint participation in a lawful athletic contest or competi-
25 tive sport;

26 “(3) the conduct and the injury are reasonably foreseeable
27 hazards of an occupation or profession or of medical or scientific
28 experimentation conducted by recognized methods and the per-
29 sons subjected to such conduct or injury have been made aware
30 of the risks involved prior to giving consent; or

31 “(4) any other similar situation exists.

32 “(c) DEFENSE PRECLUDED.—Except as otherwise provided, consent
33 is not a defense if:

34 “(1) it is given by a person who is legally incompetent to au-
35 thorize the conduct;

36 “(2) it is given by a person whose improvident consent is
37 sought to be prevented by the law defining the offense;

38 “(3) it is given by a person who by reason of age, mental
39 illness or defect, or intoxication is manifestly unable or known

by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct; or

“(4) it is induced by force, duress, or deception.

“Chapter 4.—SENTENCING

“Subchapter

“A. General Provisions.

“B. Imprisonment.

“C. Fines.

“D. Probation.

“E. Sentence of Death.

“Subchapter A.—General Provisions

“Sec.

“1-4A1. Authorized Sentences.

“1-4A2. Resentence.

“1-4A3. Disqualification.

“1-4A4. Criminal Forfeiture.

“1-4A5. Joint Sentence.

“§ 1-4A1. Authorized Sentences

“(a) GENERAL.—The court shall sentence every offender in accordance with this chapter. The imposition of sentence shall be accompanied by an appropriate findings of facts and statement of reasons.

“(b) MURDER AND TREASON.—The court shall sentence an offender who has been convicted of murder or treason to death or imprisonment in accordance with section 1-4E1 (Sentence of Death).

“(c) ALL OFFENSES.—The court shall make one or more of the following dispositions of an offender. The court may :

“(1) sentence him to imprisonment or, if the offender is an organization, to suspension of the right to affect interstate or foreign commerce, for a term authorized by section 1-4B1 (Sentence of Imprisonment) ;

“(2) sentence him to pay a fine authorized by section 1-4C1 (Fines) ;

“(4) discharge him on condition of release ;

“(5) require him to make restitution to person injured by the commission of the offense ;

“(6) place him on probation and in addition to imposing a condition of release commit him to official detention by the Bureau of Corrections at whatever time or for such intervals within the period of probation as the court determines ;

“(7) require him to give appropriate notice of the conviction to the person, or class of persons or sector of the public affected by the conviction, by advertising in designated areas or by designated media or otherwise, for a designated period of time ; or

“(8) enter an order of disqualification as provided in section 1-4A3 (Disqualification),

1 “(d) **CRIMINAL FORFEITURE.**—The court shall, where applicable,
2 order a criminal forfeiture in accordance with section 1-4A4 (Crimi-
3 nal Forfeiture).

4 **“§ 1-4A2. Resentence**

5 “If the conviction of an offender of one or more but not all of the
6 offenses for which a sentence is imposed is set aside on appeal or col-
7 lateral attack, the case shall be remanded to the court which imposed
8 sentence for resentencing. Such court may impose any sentence which
9 it might originally have imposed under section 1-4A1 (Authorized
10 Sentences) for the offense as to which the offender’s conviction has not
11 been set aside on appeal or collateral attack.

12 **“§ 1-4A3. Disqualification**

13 “(a) **FEDERAL PUBLIC SERVANT.**—A Federal public servant who is
14 convicted of an offense may, as part of his sentence, be disqualified
15 from any, or a specified, Federal position or category of positions for
16 such period, not in excess of the authorized term of imprisonment for
17 such offense, as the court may determine to be in the interest of justice.

18 “(b) **ORGANIZATION AND PROFESSIONAL FUNCTIONS.**—An executive
19 officer or other agent of an organization or a member of a licensed pro-
20 fession convicted of an offense may, as part of his sentence, be disquali-
21 fied from exercising similar functions in the same or another similar
22 organization or from practicing his profession or may be required to
23 exercise such functions or practice such profession subject to a specified
24 condition for such period, not in excess of the authorized term of im-
25 prisonment for such offense, as the court may determine to be in the
26 interest of justice.

27 “(c) **DURATION.**—Any disqualification or disability imposed under
28 this section commences on the day it is imposed unless otherwise speci-
29 fied in the order of disqualification or disability. The court may, for
30 good cause, discharge a person from any disqualification or disability
31 at any time after sentence.

32 “(d) **SUITABILITY AND RELATIONSHIP.**—Any disqualification or dis-
33 ability imposed under this section shall be suitable under the circum-
34 stances and reasonably related to the character of the offense for which
35 the person is convicted.

36 “(e) **NOT EXCLUSIVE.**—The disqualification or disabilities authorized
37 by this section are not exclusive.

1 **“§ 1-4A4. Criminal Forfeiture**

2 “(a) **GENERAL.**—In addition to any other sentence, the court shall
3 order forfeited to the United States any property, tangible or intangi-
4 ble, real or personal, including money, used, intended for use, or pos-
5 sessed in violation of section 2-9C1 (Racketeering Activity).

6 “(b) **APPLICATION BY UNITED STATES.**—The attorney for the govern-
7 ment may petition for criminal forfeiture under subsection (a). If
8 such an application is made, the court may at any time enter such re-
9 straining orders or prohibitions or take such other actions as are in the
10 interest of justice, including the acceptance of satisfactory perform-
11 ance bonds in connection with any property subject to criminal
12 forfeiture.

13 “(c) **ENFORCEMENT.**—If a criminal forfeiture sentence is imposed,
14 the Attorney General is authorized to seize all property or other inter-
15 est declared forfeited upon such terms and conditions as are in the
16 interest of justice. The United States shall dispose of all such prop-
17 erty or other interest as soon as commercially feasible, making due
18 provision for the rights of innocent persons. If any property or other
19 interest is not exercisable or transferable for value by the United
20 States, it shall not revert to the offender but shall expire. All provi-
21 sions of law relating to the disposition of civilly forfeited property,
22 the proceeds from the sale of such property, the remission or mitigation
23 of civil forfeitures for violation of the customs laws, and the compro-
24 mise of claims and the award of compensation to informants with re-
25 spect to civil forfeitures shall apply to criminal forfeitures incurred,
26 or alleged to have been incurred, under this section, insofar as appli-
27 cable and not inconsistent with the provisions of this section. Such
28 duties as are imposed upon the collector of customs or any other person
29 with respect to the civil seizure, forfeiture, or disposition of property
30 under the customs laws shall be performed with respect to property
31 used, intended for use, or possessed in violation of subsection (a) by
32 such officers, agents, or other persons as may be designated for that
33 purpose by the Attorney General.

34 **“§ 1-4A5. Joint Sentence**

35 “(a) **GENERAL.**—An offender convicted at one time of more than
36 one offense or at different times of one or more offenses all of which
37 were committed prior to the imposition of any sentence for any of
38 such offenses shall be sentenced to a joint sentence.

39 “(b) **IMPRISONMENT.**—If imprisonment is imposed, the joint sentence
40 may be for a term which is longer than the longest term that is au-
41 thorized for any of the offenses but shall not exceed seventy-five per

1 centum of the total of the terms that are authorized for each of the
2 offenses.

3 “(c) FINE.—If a fine is imposed, the joint fine may be for an amount
4 which is more than the highest fine that is authorized for any of the
5 offenses but shall not exceed seventy-five per centum of the total of the
6 fines that are authorized for each of the offenses.

7 : **“Subchapter B.—Imprisonment**

“Sec.

“1-4B1. Sentence of Imprisonment.

“1-4B2. Upper-range Imprisonment for Dangerous Special Offender.

“1-4B3. Duration of Imprisonment.

8 **“§ 1-4B1. Sentence of Imprisonment**

9 “(a) AUTHORIZED UPPER-RANGE TERMS FOR FELONIES.—The author-
10 ized upper-range terms of imprisonment for felonies are:

11 “(1) for a Class A felony, a term of years not to exceed 30 years;

12 “(2) for a Class B felony, a term of years not to exceed 20
13 years;

14 “(3) for a Class C felony, a term of years not to exceed 10
15 years; or

16 “(4) for a Class D felony, a term of years not to exceed 6 years.

17 “(b) AUTHORIZED LOWER-RANGE TERMS FOR FELONIES.—The au-
18 thorized lower-range terms of imprisonment for felonies are:

19 “(1) for a Class A felony, a term of years not to exceed 20 years;

20 “(2) for a Class B felony, a term of years not to exceed 10
21 years;

22 “(3) for a Class C felony, a term of years not to exceed 5 years;
23 or

24 “(4) for a Class D felony, a term of years not to exceed 3
25 years.

26 “(c) OTHER AUTHORIZED TERMS.—The authorized terms of impris-
27 onment for other offenses are:

28 “(1) for a Class E felony, a term not to exceed 1 year;

29 “(2) for a misdemeanor, a term not to exceed 6 months; or

30 “(3) for a violation, a term not to exceed 30 days.

31 “(c) MINIMUM TERM.—A sentence of imprisonment shall have no
32 minimum term unless by the affirmative action of the court a minimum
33 term is set, at no more than one-fourth of the sentence of imprisonment
34 actually imposed. The court shall not impose a minimum term unless,
35 having due regard to the nature and circumstances of the offense and
36 the history, character, and condition of the offender, it is of the opinion
37 that such a term is required because of exceptional features, such
38 as those which warrant imposition of a term in the upper range under

section 1-4B2 (Upper-range Imprisonment for Dangerous Special offender). The court shall have the authority to reduce an imposed minimum term at any time, upon motion of the Bureau of Corrections, upon notice to the attorney for the government.

“(d) BUREAU OF CORRECTIONS.—An offender sentenced to imprisonment shall be committed for the term designated by the court to official detention by the Bureau of Corrections, which shall specify the place or places where the sentence shall be served. If an offender is under the age of 22 years at the time of conviction, the court may recommend, as part of its sentence, that he be confined and treated in an adult institution or that he be confined and treated in a facility established for youthful offenders. If the court determines after a study by the Bureau of Corrections that an offender is a narcotics addict, drug abuser, or an alcoholic and that he can be treated, the court as part of its sentence may recommend that he be confined and treated in facilities established for the rehabilitation of narcotics addicts, drug abusers, or rehabilitation of alcoholics.

§ 1-4B2. Upper-range Imprisonment for Dangerous Special Offender

“(a) UTILIZATION.—A sentence in the upper-range of the authorized term of imprisonment shall not be imposed unless the offender is a dangerous special offender.

“(b) DEFINITIONS.—As used in this section, an offender is:

“(1) ‘dangerous’ if a period of confinement longer than that otherwise provided is required for the protection of the public from further criminal conduct by such offender; and

“(2) a ‘special offender’ if:

“(i) he has previously been convicted of two or more felonies committed on occasions different from one another and from the current felony, and for one or more of such convictions he has been imprisoned prior to the commission of the current felony. An invalid conviction or one for which he has been pardoned shall be disregarded;

“(ii) he committed the current felony as part of a pattern of criminal conduct which constituted a substantial source of his income, or in which he manifested special skill or expertise. Special skill or expertise in criminal conduct includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution, or

concealment of criminal conduct, the enlistment of accomplices in such conduct, the escape from detection or apprehension of such conduct, or the disposition of the fruits or proceeds of such conduct;

“(iii) his mental condition is abnormal, and makes him a serious danger to the safety of others, and he committed the current felony as an instance of aggressive conduct with heedless indifference to the consequences of such conduct;

“(iv) he used a firearm or destructive device in the commission of the felony or flight from it; or

“(v) the current felony was, or he committed the current felony in furtherance of, a conspiracy with three or more other coconspirators to engage in a pattern of criminal conduct and he did, or agreed or promised that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct.

For purposes of subparagraph (ii) and subparagraph (v), criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, accomplices, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

“(c) EVIDENCE.—In support of findings under subsection (b) (2) (ii), it may be shown that the offender has had in his own name or under his control income or property not explained as derived from a source other than criminal conduct.

“§ 1-4B3. Duration of Imprisonment

“(a) COMMENCEMENT OF SENTENCE.—The sentence of imprisonment of any offender convicted of an offense commences on the date on which such offender is received at the correctional facility at which the sentence is to be served.

“(b) CREDITS.—The Bureau of Corrections shall give credit toward service of the maximum term and any minimum term of a sentence to imprisonment:

“(1) for all time spent in official detention as a result of the offense or conduct for which the sentence was imposed;

“(2) where the offender was arrested on one charge and later prosecuted on another charge growing out of conduct which occurred prior to his arrest, for all time spent in official detention under the former charge which has not been credited against another sentence;

“(3) in its discretion, for excellent performance in vocational training, educational development, or other rehabilitative programs, in accordance with regulations of the Bureau. No such credit shall be given unless the Attorney General certifies that adequate programs of this nature are available to all offenders in official detention in the particular institution, and no such credit shall be given simply for observing the rules of a penal or correctional institution or for avoiding disciplinary action.

“(4) for fifty percentum of all time spent on probation or conditional discharge where an offender has his probation or conditional discharge revoked.

“Subchapter C.—Fines

“Sec.

“1-4C1. Fines.

“1-4C2. Response to Nonpayment of Fine.

“§ 1-4C1. Fines

“(a) AUTHORIZED FINES.—Except as otherwise provided, the court, having regard to the nature and circumstances of the offense, may sentence an offender to pay a daily fine for a term of not less than ten days or more than 1,095 days (3 years). The amount of the daily fine imposed on an offender shall be fixed by the court on the basis of such offender’s employment income, earning capacity, or financial resources. The amount of such daily fine shall not exceed:

“(1) \$1,000 per day for a Class A or Class B felony;

“(2) \$500 per day for a Class C or a Class D felony;

“(3) \$100 per day for a Class E felony; or

“(4) \$50 per day for a misdemeanor or a violation.

“(b) ALTERNATIVE FINE.—In lieu of sentencing under subsection (a), an offender who has been convicted of an offense through which he derived pecuniary benefit or by which he caused personal injury or property damage or loss may be sentenced to a fine which does not exceed twice the benefit so derived or twice the loss so caused.

“(c) CRITERIA.—The court shall not sentence an offender to pay a fine unless it finds that he is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the burden that payment will impose on the offender. The court shall not sentence an offender to pay a fine in any amount which will prevent him from making restitution or reparation to the victim of the offense under section 1-4A1(c3)(5) (Authorized Sentence) or 1-4D2(c)(10) (Condition of Release), or which the court is not satisfied that the offender can pay in full.

1 “(d) **REVOCATION.**—An offender who has been sentenced to pay a fine
2 and who has not inexcusably defaulted in the payment of such fine
3 may at any time petition the court which sentenced him for a revocation
4 of the fine or of any unpaid portion of such fine. If the court finds that
5 the circumstances which warranted the imposition of the fine have
6 changed, or that it would be otherwise unjust to require payment, the
7 court may :

8 “(1) revoke the fine or the unpaid portion in whole or in part; or

9 “(2) modify the term of the sentence.

10 **“§ 1-4C2. Response to Nonpayment of Fine**

11 “(a) **RESPONSE TO DEFAULT.**—When an offender sentenced to pay a
12 fine defaults in the payment of the fine or in any installment, the court,
13 upon the motion of the attorney for the government may require him to
14 show cause why he should not be imprisoned for nonpayment. The
15 court may issue a warrant of arrest or a summons for his appearance.

16 “(b) **IMPRISONMENT.**—Following an order to show cause under sub-
17 section (a), unless the offender shows that his default was not attribu-
18 table to an intentional refusal to obey the sentence of the court, or not
19 attributable to a failure on his part to make a good faith effort to obtain
20 the necessary funds for payment, the court may order the offender
21 imprisoned for a term not to exceed six months if the fine was imposed
22 for conviction of a felony or 60 days if the fine was imposed for con-
23 viction of a misdemeanor or a violation. The court may provide in its
24 order that payment or satisfaction of the fine at any time will entitle
25 the offender to his release from such imprisonment or, after entering
26 the order, may at any time reduce the sentence for good cause shown,
27 including payment or satisfaction of the fine.

28 “(c) **MODIFICATION.**—If it appears that the offender’s default in the
29 payment of the fine is excusable, the court may enter an order allowing
30 the offender additional time for payment, reducing the amount of the
31 fine or of each installment, or revoking the fine or the unpaid portion
32 of such fine in whole or in part.

33 **“Subchapter D.—Probation**

“Sec.

“1-4D1. Probation and Conditional Discharge.

“1-4D2. Conditions of Release.

“1-4D3. Duration of Probation or Conditional Discharge.

“1-4D4. Response to Noncompliance With Condition of Release.

34 **“§ 1-4D1. Probation and Conditional Discharge**

35 “(a) **AUTHORIZATION.**—An offender may be placed on probation
36 under strict or limited supervision, or discharged without supervision

1 under a condition or conditions of release. The authorized terms of
2 probation and conditional discharge are :

3 “(1) for a felony or a misdemeanor, a term of years not to ex-
4 ceed 5 years; or

5 “(2) for a violation, a term not to exceed 1 year.

6 “(b) STANDARDS FOR RELEASE ON PROBATION OR CONDITIONAL DIS-
7 CHARGE.—In determining whether an offender shall be placed on
8 probation, and if so, whether under strict or limited supervision, or
9 whether he shall be discharged without supervision under a condition
10 or conditions of release, the court, having due regard to the nature and
11 circumstances of the offense and the history, character, and condition
12 of the offender, shall be guided by the need to maintain respect for
13 law and to reinforce the credibility of the deterrent factor of the law,
14 the need to protect the community, the need of the offender for con-
15 tinuing supervision and assistance, and the available resources of the
16 Federal probation service.

17 “(c) FACTORS.—The following factors, where relevant and taken
18 in context, are proper for consideration by the court in determining
19 whether to place an offender on probation under strict or limited super-
20 vision or to discharge him without supervision under a condition or
21 conditions of release :

22 “(1) whether the offender’s release plan, if any, is adequate;

23 “(2) whether the offender’s criminal conduct caused or threat-
24 ened serious harm to another person or his property ;

25 “(3) whether the offender planned or expected that his criminal
26 conduct would cause or threaten serious harm ;

27 “(4) whether the offender acted under strong provocation ;

28 “(5) whether there were substantial grounds tending to excuse
29 or justify the offender’s criminal conduct, although failing to
30 establish a defense ;

31 “(6) whether the victim of the offender’s conduct induced or
32 facilitated its commission ;

33 “(7) whether the offender has compensated or will compensate
34 the victim of his criminal conduct for the damage or injury
35 sustained ;

36 “(8) whether the offender has a history of prior delinquency
37 or criminal activity, or has led a law-abiding life for a substantial
38 period of time before the commission of the present offense ;

39 “(9) whether the offender’s criminal conduct was the result of
40 circumstances unlikely to recur :

1 “(10) whether the history, character, and attitudes of the of-
2 fender indicate that he is unlikely to commit another offense;

3 “(11) whether the offender is particularly likely to respond
4 affirmatively to probation or conditional discharge;

5 “(12) whether the imprisonment of the offender would entail
6 excessive hardship to him or to his dependents;

7 “(13) whether the offender is elderly or in poor health;

8 “(14) whether the offender abused a position of trust or of
9 public responsibility;

10 “(15) whether the offender cooperated with law enforcement
11 authorities in bringing other persons to justice;

12 “(16) whether the offender confessed or expressed remorse;

13 “(17) whether the offender sets an example for others because
14 of his position;

15 “(18) whether such release would depreciate the seriousness of
16 the offender's offense or promote disrespect for law; or

17 “(19) any other factors deemed by the court to be related to
18 the criteria in subsection (b).

19 **“§ 1-4D2. Conditions of Release**

20 “(a) GENERAL.—The conditions of release on probation or condi-
21 tional discharge shall be such as the court in its discretion deems rea-
22 sonable and appropriate to assist the offender to lead a law-abiding
23 life. It shall be a condition in each case that the offender not commit
24 another offense, Federal, state, or local, during the term of probation
25 or conditional discharge.

26 “(b) MANDATORY PROBATION CONDITIONS.—If the offender is placed
27 on probation, it shall be a condition in each case that the person
28 convicted:

29 “(1) report to a probation officer at reasonable times as di-
30 rected by the court or the probation officer;

31 “(2) permit the probation officer to visit him at reasonable
32 times and hours at his place of residence or elsewhere;

33 “(3) answer truthfully all reasonable inquiries by the proba-
34 tion officer; and

35 “(4) notify the probation officer promptly of any change in
36 situation, residence, or employment.

37 “(c) APPROPRIATE CONDITIONS.—The court, as a condition of its
38 order of release on probation or conditional discharge, may require the
39 offender:

1 “(1) to support his dependents and to meet his family
2 responsibilities;

3 “(2) to devote himself to an approved employment or
4 occupation;

5 “(3) to undergo available medical or psychiatric treatment and
6 to enter and remain in a specified institution, when required for
7 that purpose;

8 “(4) to pursue a prescribed course of study or vocational
9 training;

10 “(5) to attend or reside in a facility established for the instruc-
11 tion, recreation, or residence of persons released on probation or
12 conditional discharge;

13 “(6) to participate in a community treatment program;

14 “(7) to refrain from frequenting specified places, consorting
15 with specified persons, or engaging in conduct similar to that
16 constituting the offense for which he has been convicted or afford-
17 ing favorable opportunities for repeating the offense;

18 “(8) to refrain from possessing a firearm or other dangerous
19 weapon;

20 “(9) to pay any fine authorized by this chapter;

21 “(10) to make restitution of the fruits of his offense or to make
22 reparation, in an amount he can afford to pay, for the loss or
23 damage caused by such offense;

24 “(11) to refrain from excessive use of alcohol and drug abuse;

25 “(12) to comply, so far as practicable, with the terms and objec-
26 tives of the release plan and notify the court of any changes or
27 amendment to such plan;

28 “(13) to participate in a supervised rehabilitation program
29 which may include treatment, counseling, training, and education;

30 “(14) to reside in a specified place or area where the likelihood
31 of his committing further offenses is lessened, or to refrain from
32 residing in a specified neighborhood, town, city or state;

33 “(15) to post bond or deposit cash or property, in an amount
34 he can afford, with or without surety, conditioned on the perform-
35 ance of his obligations; or

36 “(16) to comply with any other condition or conditions deemed
37 by the court to be reasonably related to the rehabilitation of the
38 offender or to public safety or security.

39 “(d) CERTIFICATE.—When an offender is released on probation or
40 conditional discharge, he shall be given a certificate explicitly setting
41 forth the conditions on which he is being released.

1 **“§ 4D3. Duration of Probation or Conditional Discharge**

2 “(a) COMMENCEMENT.—A period of probation or conditional dis-
3 charge commences on the day it is imposed.

4 “(b) MODIFICATION AND DISCHARGE.—The court may at any time
5 modify the requirements or discharge the offender.

6 **“§ 1-4D4. Response to Noncompliance With Condition of Release**

7 “At any time before the discharge of the offender or the termination
8 of the period of probation or conditional discharge:

9 “(a) the court may summon the offender to appear before it or
10 may issue a warrant for his arrest;

11 “(b) a probation officer, if he has probable cause to believe that
12 the offender has failed to comply with a condition of release or
13 that he has committed another offense may arrest him without a
14 warrant, and may authorize any law enforcement officer to make
15 the arrest;

16 “(c) the court, if it has probable cause to believe that the
17 offender has committed another offense or if he has been held to
18 answer for another offense, may commit him without bail for
19 such period as the court may determine or redetermine, pending
20 a determination of the charge by the court having jurisdiction
21 over it, and the time of such commitment shall be credited as time
22 served for the original offense if the offender is not later con-
23 victed of such other offense;

24 “(d) the court, if satisfied that the offender has inexcusably
25 failed to comply with a condition of release may revoke the
26 probation or conditional discharge and order him committed
27 without bail pending a hearing; or

28 “(e) the court, if it revokes probation or conditional discharge,
29 may impose on the offender any sentence that might have been
30 imposed originally for the offense of which he was convicted.

31 **“Subchapter E.—Sentence of Death**

“Sec.

“1-4E1. Sentence of Death.

“1-4E2. Separate Proceeding to Determine Sentence of Death.

32 **“§ 1-4E1. Sentence of Death**

33 “(a) AUTHORIZATION.—If the offender is convicted of murder or of
34 treason, a sentence of death or life imprisonment shall be imposed in
35 accordance with the provisions of this section and section 1-4E2 (Sep-
36 arate Proceeding to Determine Sentence of Death).

37 “(b) STANDARDS FOR IMPOSITION OF SENTENCE OF DEATH.—In decid-
38 ing whether a sentence of death should be imposed, the court and the

1 jury, if any, shall be guided by the mitigating and aggravating cir-
2 cumstances set forth below :

3 “(1) The following shall be mitigating circumstances in the
4 cases of both murder and treason :

5 “(i) the crime was committed while the offender was under
6 the influence of extreme mental or emotional disturbance ;

7 “(ii) the offender acted under unusual pressures or in-
8 fluences or under the domination of another person ;

9 “(iii) at the time of the crime, the capacity of the offender
10 to appreciate the character of his conduct or to control his
11 conduct was impaired as a result of mental illness, mental
12 defect, or intoxication ;

13 “(iv) the offender was emotionally immature at the time of
14 the crime ;

15 “(v) the offender was an accomplice in the crime com-
16 mitted by another person and his participation was relatively
17 minor ;

18 “(vi) the crime was committed under circumstances which
19 the offender believed to provide a moral justification or ex-
20 tenuation for his conduct and which is plausible by ordinary
21 standards of morality and intelligence ; or

22 “(vii) the offender has no significant history of prior
23 criminal activity.

24 “(2) The following shall be aggravating circumstances in the
25 case of treason :

26 “(i) the offender knowingly created a great risk of death
27 to another person or a great risk of substantial impairment
28 of national security ;

29 “(ii) the offender violated a legal duty concerning pro-
30 tection of the national security ; or

31 “(iii) the offender committed treason for pecuniary
32 benefit.

33 “(3) The following shall be aggravating circumstances in the
34 case of murder :

35 “(i) the offender was previously convicted of another
36 murder or a crime involving the use or threat of violence to
37 the person, or has a substantial history of serious assaultive
38 or terrorizing criminal activity ;

39 “(ii) at the time the murder was committed the offender
40 also committed another murder ;

“(iii) the offender knowingly created a great risk of death to at least several persons;

“(iv) the offender committed the murder for pecuniary benefit;

“(v) the murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence;

“(vi) the victim was a public servant who was holding the offender or another person in official detention;

“(vii) the victim was a law enforcement officer; or

“(viii) the victim was the President of the United States or other high public servant.

§ 1-4E2. Separate Proceeding to Determine Sentence of Death

“(a) COURT OR JURY.—The court shall conduct a separate proceeding to determine whether an offender convicted of murder or treason shall be sentenced to death or life imprisonment. The proceeding may be conducted before the jury which determined guilt, unless the person, with the approval of the court, waives a jury, or it may be conducted before a jury specially empaneled.

“(b) EVIDENCE AND ARGUMENT.—In the proceeding, any evidence may be presented as to any matter relevant to sentence. The attorney for the government and the offender or his counsel shall be permitted to present argument for or against sentence of death.

“(c) VERDICT AND SENTENCE.—The determination whether a sentence of death shall be imposed shall rest in the judgment of the court, except that when the proceeding is conducted before the court sitting with a jury, the court shall not impose a sentence of death unless it submits to the jury the issue whether the offender should be sentenced to death or life imprisonment and the jury returns a verdict that the sentence should be death. If the jury is unable to reach a unanimous verdict, the court shall sentence the offender to imprisonment for life.

“PART II.—SPECIAL PART

“Chapter	Sec.
“5. Offenses Involving the Nation.....	2-5A1
“6. Offenses Involving Governmental Processes.....	2-6A1
“7. Offenses Against the Person.....	2-7A1
“8. Offenses Against Property.....	2-8A1
“9. Offenses Against Public Order.....	2-9A1

1 **"Chapter 5.—OFFENSES INVOLVING THE NATION**

"Subchapter

"A. General Provisions.

"B. National Security.

"C. Foreign Relations and Trade.

"D. Immigration, Naturalization, and Passports.

2 **"Subchapter A.—General Provisions**

"Sec.

"2-5A1. Definition of Terms.

"2-5A2. Jurisdiction.

3 **"§ 2-5A1. Definition of Terms**

4 "As used in this chapter, unless it is otherwise provided or a different
5 meaning plainly is required:

6 "(1) 'alien' means human being who is not a citizen or a na-
7 tional of the United States;

8 "(2) 'application for admission' means the application for
9 admission into the United States and not the application for the
10 issuance of an immigrant or nonimmigrant visa;

11 "(3) 'communications information' means information regard-
12 ing:

13 "(i) the nature, preparation, or use of any code, cipher,
14 or cryptographic system of the United States or of a foreign
15 power, including any method of secret writing and any
16 mechanical or electrical device or method used for the purpose
17 of disguising or concealing the contents, significance, or
18 means of communications;

19 "(ii) the design, construction, use, maintenance, or repair
20 of any device, apparatus, or appliance used or prepared or
21 planned for use by the United States or a foreign power for
22 cryptographic or intelligence surveillance purposes; or

23 "(iii) the foreign intelligence surveillance activities of the
24 United States or a foreign power, including the procedures
25 and method used in the interception of communications and
26 the obtaining of information from such communications by
27 other than the intended recipients;

28 "(4) 'crewman' means a person who is working in any capacity
29 on board a vessel or vehicle;

30 "(5) 'deception' includes:

31 "(i) creating or reinforcing a false impression as to fact,
32 law, status, value, intention, or other state of mind by false
33 written statement, impersonation, or the presentation of a
34 forged or counterfeit writing; or

1 “(ii) preventing a public servant from acquiring informa-
2 tion which would affect his official conduct;

3 “(6) ‘entry’ means any coming of an alien into the United
4 States from a foreign port or place or from an outlying posses-
5 sion, whether voluntarily or otherwise, except that an alien having
6 a lawful permanent residence in the United States shall not be
7 regarded as making an entry if such alien satisfies the Attorney
8 General that his departure to a foreign port or place or to an
9 outlying possession was not intended or reasonably to be expected
10 by him or that his presence in a foreign port or place or in an
11 outlying possession was not voluntary. This exception is not avail-
12 able to any person whose departure from the United States was
13 occasioned by deportation proceedings, extradition, or other legal
14 process;

15 “(7) ‘foreign power’ includes any foreign government, faction,
16 party, or military force, or persons purporting to act as such,
17 whether or not recognized by the United States, and any public
18 international organization designated under section 1 of the Inter-
19 national Organizations Immunities Act (22 U.S.C. 288);

20 “(8) ‘immigration officer’ means any employee or class of em-
21 ployees of the Immigration and Naturalization Service of the
22 Department of Justice or any Federal public servant designated
23 by the Attorney General, personally or by regulation, to perform
24 the functions of an immigration officer;

25 “(9) ‘national of the United States’ means a person who is a
26 citizen of the United States or who owes allegiance to the United
27 States; and

28 “(10) ‘national defense information’ means information regard-
29 ing:

30 “(i) the military capability of the United States or of a
31 nation at war with a nation with which the United States is
32 at war;

33 “(ii) military or defense planning or operations of the
34 United States;

35 “(iii) military communications, research, or development
36 of the United States;

37 “(iv) restricted data as defined in section 2014, title 42,
38 United States Code;

39 “(v) communications information;

1 “(vi) in time of war, any other information which if re-
2 vealed could be harmful to national defense and which might
3 be useful to the enemy.

4 “(vii) defense intelligence of the United States, including
5 information relating to intelligence operations, activities,
6 plans, estimates, analyses, sources, and methods.

7 **“§ 2-5A2. Jurisdiction**

8 “Federal jurisdiction over offenses in this chapter exists when the
9 offense is committed.

10 **“Subchapter B.—National Security**

“Sec.

“2-5B1. Treason.

“2-5B2. Military Activity Against the United States.

“2-5B3. Armed Insurrection.

“2-5B4. Sabotage.

“2-5B5. Avoiding Military Service Obligation.

“2-5B6. Obstructing Military Service.

“2-5B7. Espionage.

“2-5B8. Misuse of National Defense Information.

“2-5B9. Violation of Wartime Censorship.

“2-5B10. Aiding National Security Offender or Deserter.

“2-5B11. Aiding Escape of Prisoner of War or Enemy Alien.

“2-5B12. Offenses Relating to Vital Materials.

11 **“§ 2-5B1. Treason**

12 “(a) OFFENSE.—A person who is a national of the United States is
13 guilty of treason if he engages in :

14 “(1) levying war against the United States; or

15 “(2) adhering to its enemies, giving them aid and comfort.

16 “(b) GRADING.—The offense is a Class A felony, but a person con-
17 victed of treason shall be sentenced under section 1-4E1 (Sentence of
18 Death).

19 **“§ 2-5B2. Military Activity Against the United States**

20 “(a) OFFENSE.—A person is guilty of military activity against the
21 United States if, with intent to aid the enemy or to prevent or obstruct
22 a victory of the United States, during a time of war and within the
23 United States, he participates in or facilitates military activity of the
24 enemy.

25 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense that the
26 defendant acted as a member of the armed services of the enemy in
27 accordance with the laws of war.

28 “(c) GRADING.—The offense is a Class A felony.

29 **“§ 2-5B3. Armed Insurrection**

30 “(a) OFFENSE.—A person is guilty of an offense if :

31 “(1) with intent to overthrow, supplant, or change the form of
32 the government of the United States or of a state, he :

1 “(i) engages in an armed insurrection, or

2 “(ii) directs, leads, organizes, or provides a substantial
3 portion of the resources of an armed insurrection which in-
4 volves 50 or more accomplices; or

5 “(2) with intent to induce or otherwise cause other persons to
6 engage in armed insurrection which is, in fact, in violation of
7 paragraph (1), he:

8 “(i) advocates the desirability or necessity of armed in-
9 surrection under circumstances in which there is substantial
10 likelihood his advocacy will imminently produce, in fact, a
11 violation of paragraph (1), or

12 “(ii) organizes a conspiracy which engages in such ad-
13 vocacy, or, as an active member of such conspiracy, facilitates
14 such advocacy.

15 “(b) ATTEMPT AND SOLICITATION PRECLUDED.—Section 1-2A4
16 (Criminal Attempt) and section 1-2A3 (Criminal Solicitation) are
17 inapplicable under this section.

18 “(c) GRADING.—The offense defined in:

19 “(1) subsection (a) (1) (i) is a Class B felony;

20 “(2) subsection (a) (1) (ii) is a Class A felony; and

21 “(3) subsection (a) (2) is a Class C felony.

22 “(d) DEFINITION.—As used in this section, ‘armed insurrection’
23 means an act of revolt against the government of the United States or
24 of any state in which one or more accomplices uses a firearm, destruc-
25 tive device, or other dangerous weapon.

26 **“§ 2-5B4. Sabotage**

27 “(a) OFFENSE.—A person is guilty of sabotage if, with intent to
28 impair the military effectiveness of the United States, he:

29 “(1) damages or tampers with anything of direct military sig-
30 nificance to the United States;

31 “(2) defectively makes or repairs anything of direct military
32 significance to the United States; or

33 “(3) delays or obstructs transportation, communications, or
34 power service of or furnished to the defense establishment of the
35 United States or of a nation at war with any nation with which
36 the United States is at war.

37 “(b) GRADING.—The offense is:

38 “(1) a Class A felony if it is committed in time of war and
39 jeopardizes life or the success of a combat operation;

1 “(2) a Class B felony if it is committed in time of war; or

2 “(3) a Class C felony if it is not committed in time of war.

3 “(c) DEFINITION.—As used in this section, ‘anything of direct mili-
4 tary significance’ means armament or anything else peculiarly suited
5 for military use, and includes such a thing in course of research and
6 development, manufacture, transport, or other servicing or prepara-
7 tion for the defense establishment.

8 **“§ 2-5B5. Avoiding Military Service Obligation**

9 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
10 avoid service in the armed services of the United States or the perform-
11 ance of civilian work in lieu of induction into the armed services, he vio-
12 lates the Selective Service Act of 1967, any other statute applicable to
13 the recruiting of personnel for the armed services, or a rule, regulation,
14 or order issued under such statute, by:

15 “(1) failing to register;

16 “(2) failing to report for induction into the armed services;

17 “(3) refusing induction into the armed services; or

18 “(4) refusing or failing to perform, or avoiding the perform-
19 ance of, civilian work required of him.

20 “(b) DURATION OF OFFENSE.—An offense under subsection (a) (1)
21 continues until the person is no longer under a duty to register.

22 “(c) GRADING.—The offense is a Class D felony.

23 **“§ 2-5B6. Obstructing Military Service**

24 “(a) OFFENSE.—A person is guilty of an offense if:

25 “(1) in time of war, he intentionally obstructs the Selective
26 Service System, a voluntary enlistment system, or any other sys-
27 tem for obtaining personnel for the armed services of the United
28 States by physical interference or obstacle;

29 “(2) with intent to avoid or delay his or another person’s
30 service in the armed services of the United States, he employs
31 force, threat, or deception to influence the official conduct of a
32 Federal public servant; or

33 “(3) he intentionally causes insubordination, mutiny, or re-
34 fusal of duty by a member of the armed services of the United
35 States.

36 “(b) GRADING.—The offense is a Class C felony.

37 **“§ 2-5B7. Espionage**

38 “(a) OFFENSE.—A person is guilty of espionage if:

39 “(1) with knowledge that the information is to be used to the
40 injury of the United States or to the advantage of a foreign

1 power, he gathers, obtains, or reveals national defense informa-
 2 tion for or to a foreign power or an agent of such power; or

3 “(2) with intent that it be communicated to the enemy and in
 4 time of war, he elicits, collects, records, publishes, or otherwise
 5 communicates national defense information.

6 “(b) ATTEMPT.—Without otherwise limiting the applicability of
 7 section 1-2A4 (criminal attempt), any of the following is sufficient
 8 to constitute a substantial step under such section toward commission
 9 of espionage under subsection (a) (1) : obtaining, collecting, or eliciting
 10 national defense information, or entering a restricted area to obtain
 11 such information.

12 “(c) GRADING.—The offense is a Class A felony if committed in time
 13 of war or if the information directly concerns military missiles, space
 14 vessels, satellites, nuclear weaponry, early warning systems or other
 15 means of defense or retaliation against attack by a foreign power, war
 16 plans, or defense strategy. Otherwise it is a Class B felony.

17 **“§ 2-5B8. Misuse of National Defense Information**

18 “(a) OFFENSE.—A person is guilty of an offense if in a manner harm-
 19 ful to the safety of the United States he :

20 “(1) knowingly reveals national defense information to a per-
 21 son who is not authorized to receive it;

22 “(2) is a public servant and with criminal negligence violates
 23 a known duty as to custody, care, or disposition of national de-
 24 fense information, or as to reporting an unauthorized removal,
 25 delivery, loss, destruction, or compromise of such information;

26 “(3) knowingly having unauthorized possession of a document
 27 or thing containing national defense information, fails to deliver
 28 it on demand to a Federal public servant entitled to receive it ;

29 “(4) knowingly communicates, uses, or otherwise makes avail-
 30 able to an unauthorized person communications information ;

31 “(5) knowingly uses communications information ; or

32 “(6) knowingly communicates national defense information to
 33 an agent or representative of a foreign power or to an officer or
 34 member of an organization which is, in fact, defined in section
 35 782(5), title 50, United States Code.

36 “(b) GRADING.—The offense is a Class C felony if it is committed in
 37 time of war. Otherwise it is a Class D felony.

38 **“§ 2-5B9. Violation of Wartime Censorship**

39 “(a) OFFENSE.—A person is guilty of an offense if in time of war
 40 and, in fact, in violation of a Federal statute or a rule, regulation, or
 41 order issued under such statute, he :

1 “(1) knowingly communicates with the enemy or an ally of the
2 enemy;

3 “(2) knowingly evades submission to censorship of a com-
4 munication passing or intended to pass between the United States
5 and a foreign power;

6 “(3) uses a code with intent to conceal from censorship the
7 meaning of a communication which is, in fact, described in para-
8 graphs (1) or (2); or

9 “(4) uses a mode of communication knowing it is prohibited
10 by such statute or a rule, regulation, or order issued under such
11 statute.

12 “(b) GRADING.—The offense is a Class C felony.

13 **“§ 2-5B10. Aiding National Security Offender or Deserter**

14 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

15 “(1) aids, shelters, or conceals another person who has engaged
16 in or is about to engage in conduct constituting, in fact, treason,
17 sabotage, espionage, or murder of the President, Vice President,
18 or other high public servant; or

19 “(2) aids a member of the armed services of the United States
20 to desert or, knowing that a member of the armed services has
21 engaged in conduct constituting, in fact, desertion, aids such per-
22 son to avoid discovery or apprehension.

23 (b) GRADING.—The offense defined in:

24 “(1) subsection (a) (1) is a Class C felony; and

25 “(2) subsection (a) (2) is a Class D felony.

26 **“§ 2-5B11. Aiding Escape of Prisoner of War or Enemy Alien**

27 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

28 “(1) facilitates the escape of a prisoner of war held by the
29 United States or any of its allies or of a person held in official
30 detention as an enemy alien by the United States or any of its
31 allies; or

32 “(2) interferes with, hinders, delays, or prevents the discovery
33 or apprehension of a prisoner of war or an enemy alien who has
34 escaped from official detention by the United States or any of
35 its allies by:

36 “(i) sheltering or concealing such person;

37 “(ii) providing such person with a weapon, money, trans-
38 portation, disguise, or other means of avoiding discovery or
39 apprehension; or

1 “(iii) warning such person of impending discovery or ap-
2 prehension other than in connection with an effort to bring
3 him into compliance with the law.

4 “(b) GRADING.—The offense is a Class C felony.

5 **“§ 2-5B12. Offenses Relating to Vital Materials**

6 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
7 injure the United States or to secure an advantage to a foreign power
8 in the event of a military confrontation with the United States, he
9 engages in conduct, in fact, prohibited or declared to be unlawful by
10 sections 2077, 2122, 2131 or 2276, title 42, United States Code or by
11 section 167c, title 50, United States Code.

12 “(b) GRADING.—The offense is a Class B felony.

13 **“Subchapter C.—Foreign Relations and Trade**

“Sec.

“2-5C1. Conduct Hostile to a Nation With Which the United States Is Not at War.

“2-5C2. Foreign Armed Services.

“2-5C3. International Transactions.

“2-5C4. Departure of Vessels and Vehicles.

“2-5C5. Foreign Agent.

14 **“§ 2-5C1. Conduct Hostile to a Nation With Which the United**
15 **States Is Not at War**

16 “(a) OFFENSE.—A person is guilty of an offense if he knowingly :

17 “(1) launches or engages in a land, air, sea or other attack from
18 the United States against a nation with which the United States
19 is not at war ;

20 “(2) organizes or participates in a military expedition assem-
21 bled in the United States to engage in armed hostilities against a
22 nation with which the United States is not at war ; or

23 “(3) engages in conduct hostile to a nation with which the
24 United States is not at war within the territory of any foreign
25 nation.

26 “(b) GRADING.—The offense is a Class C felony.

27 “(c) COMPOUND GRADING.—The offense if :

28 “(1) a Class A felony, if any of the following additional offenses
29 is committed : murder or aggravated kidnapping ; or

30 “(2) a Class B felony if any of the following additional offenses
31 is committed : maiming, aggravated arson, or aggravated malicious
32 mischief.

33 “(d) DEFINITIONS.—As used in this section :

34 “(1) ‘armed hostilities’ means international war or civil war,
35 rebellion or insurrection ; and

1 “(2) ‘conduct hostile to a nation with which the United States
2 is not at war’ includes:

3 “(i) gathering information relating to the national defense
4 of a nation with which the United States is not at war while
5 such nation is engaged in international war, with intent to
6 reveal such information to the injury of such nation or to aid
7 its enemy;

8 “(ii) intentionally killing a public servant of such a nation
9 because of his official duties; or

10 “(iii) engaging in theft or intentional destruction or of
11 damage to or tampering with property belonging to or in the
12 custody of the government of a nation with which the United
13 States is not at war, or the intentional destruction of or dam-
14 age to or tampering with a vital public facility located within
15 the territory of such nation.

16 **“§ 2-5C2. Foreign Armed Services**

17 “(a) OFFENSE.—Except as otherwise provided, a person is guilty of
18 an offense if he:

19 “(1) enters or promises to enter the armed services of a foreign
20 power; or

21 “(2) recruits another person to enter the armed services of a
22 foreign power.

23 “(b) GRADING.—The offense is a Class E felony.

24 **“§ 2-5C3. International Transactions**

25 “(a) OFFENSE.—A person is guilty of an offense if with intent to
26 conceal any matter from a government agency authorized to admin-
27 ister such statute or a rule, regulation, or order issued under it, or
28 with knowledge that such conduct obstructs or impedes such admin-
29 istration or another government function, he knowingly engages in
30 conduct which is, in fact, prohibited or declared to be unlawful by a
31 statute listed in subsection (b) or a rule, regulation, or order issued
32 under such statute.

33 “(b) STATUTES.—The following statutes are covered by subsec-
34 tion (a):

35 “(1) 12 U.S.C. § 95a or 50 U.S.C. App. § 5(b) (relating to
36 embargo on gold bullion and regulation of foreign-owned
37 property);

38 “(2) 22 U.S.C. § 447(c) (relating to financial and arms trans-
39 actions with belligerents);

40 “(3) 22 U.S.C. § 287c(b) (relating to support of United Na-
41 tions Security Council resolutions);

1 “(4) 50 U.S.C. App. § 3(a) (relating to unlicensed trading
2 with the enemy) ; and

3 “(5) 50 U.S.C. App. § 2405(b) (relating to exports to
4 communist-dominated nations under Export Control Act).

5 “(c) GRADING.—The offense is a Class D felony.

6 **“§ 2-5C4. Departure of Vessels and Vehicles**

7 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
8 causes or aids the departure from the United States of a vessel or
9 vehicle, the departure of which is, in fact, prohibited by an order
10 issued under a Federal statute designed to restrict the delivery of a
11 vessel or vehicle, or the supply of goods or services, to a foreign power
12 engaged in armed hostilities.

13 “(b) GRADING.—The offense is a Class D felony.

14 **“§ 2-5C5. Foreign Agent**

15 “(a) OFFENSE.—A person is guilty of an offense if he knowingly :

16 “(1) fails to register with the Attorney General as required by
17 section 851, title 50, United States Code (relating to persons
18 trained in a foreign espionage or sabotage system) ; or

19 “(2) fails to register as a foreign agent as required by a Fed-
20 eral statute and surreptitiously engages in the activity with re-
21 spect to which the registration requirement is imposed or conceals
22 the fact that he is a foreign agent.

23 “(b) GRADING.—The offense is a Class C felony.

24 **“Subchapter D.—Immigration, Naturalization, and Passports**

“Sec.

“2-5D1. Unlawful Entry Into the United States.

“2-5D2. Hindering Discovery of Illegal Entrant.

“2-5D3. Fraudulent Acquisition or Improper Use of Naturalization, Evidence of
Citizenship, or United States Passport.

25 **“§ 2-5D1. Unlawful Entry Into the United States**

26 “(a) OFFENSE.—A person is guilty of an offense if he :

27 “(1) intentionally brings into or lands in the United States
28 another person who is an alien, including an alien crewman, and
29 who is not admitted to the United States by an immigration
30 officer or not lawfully entitled to enter or reside within the United
31 States; or

32 “(2) is an alien and he intentionally :

33 “(i) enters the United States at a time or place other than
34 as designated under a Federal statute or a rule, regulation,
35 or order issued under such statute;

36 “(ii) eludes examination or inspection by an immigration
37 officer;

1 “(iii) obtains entry to the United States by deception; or
2 “(iv) enters the United States after having been arrested
3 and deported or excluded and deported from the United
4 States.

5 “(b) **AFFIRMATIVE DEFENSE.**—It is an affirmative defense under
6 subsection (a) (2) (iv) that:

7 “(1) the Attorney General had expressly consented to the
8 alien’s reapplying for admission to the United States prior to
9 his reembarkation at a place outside the United States or his
10 application for admission from foreign contiguous territory; or

11 “(2) with respect to an alien previously excluded and deported,
12 he was not required by a Federal statute to obtain such advance
13 consent.

14 “(c) **PRESUMPTION.**—An alien who is found in the United States
15 after having been deported is presumed to have intentionally re-
16 entered the United States.

17 “(d) **GRADING.**—The offense is a Class C felony if:

18 “(1) the person violates subsection (a) (1) in return for pe-
19 cuniary benefit or with knowledge that the alien intends to com-
20 mit a felony within the United States;

21 “(2) entry is obtained by the use of an entry document or cer-
22 tificate of naturalization or citizenship which the person knows is
23 forged or counterfeit or which belongs or pertains to another per-
24 son; or

25 “(3) the offense constitutes a violation of subsection (a) (2) (iv)
26 and the alien previously had been arrested and deported because
27 he was convicted of a felony involving moral turpitude.

28 Otherwise it is a Class D felony.

29 **“§ 2-5D2. Hindering Discovery of Illegal Entrant**

30 “(a) **OFFENSE.**—A person is guilty of an offense if, with intent to
31 hinder, delay, or prevent the discovery or apprehension of another per-
32 son who is an alien, including an alien crewman, and who has entered
33 or is in the United States in violation of law, he:

34 “(1) aids, shelters, employs, or conceals such alien;

35 “(2) provides such alien with a weapon, money, transportation,
36 disguise, or other means of avoiding discovery or apprehension;

37 “(3) conceals, alters, mutilates, or destroys a document or
38 thing; or

39 “(4) warns such alien of impending discovery or apprehension.

40 “(b) **GRADING.**—The offense is a Class C felony if the person engages
41 in such conduct:

1 “(1) as consideration for pecuniary benefit;

2 “(2) with intent to receive consideration for placing such alien
3 in the employ of another person;

4 “(3) with intent that such alien be employed or continued in
5 the employ of an enterprise operated for profit; or

6 “(4) with knowledge that such alien intends to commit a felony
7 within the United States.

8 Otherwise it is a Class D felony.

9 **“§2-5D3. Fraudulent Acquisition or Improper Use of Naturaliza-**
10 **tion, Evidence of Citizenship, or United States Pass-**
11 **port.**

12 “(a) OFFENSE.—A person is guilty of an offense if:

13 “(1) he intentionally obtains by deception United States nat-
14 uralization, registration in the alien registry of the United States,
15 or the issuance of a certificate of United States naturalization or
16 citizenship for or to any person who is not entitled to such con-
17 duct;

18 “(2) he intentionally obtains the issuance of a United States
19 passport by deception; or

20 “(3) with intent to obstruct or impede a government function
21 which is, in fact, Federal, he uses a United States passport the
22 issuance of which was obtained by deception or which was issued
23 for the use of another person.

24 “(b) GRADING.—The offense is a Class C felony.

25 **“Chapter 6.—OFFENSES INVOLVING GOVERNMENTAL**
26 **PROCESSES**

“Subchapter

“A. General Provisions.

“B. Physical Obstruction of Government Function and Related Offenses.

“C. Obstruction of Justice.

“D. Perjury, False Statement, and Integrity of Public Record.

“E. Bribery and Intimidation.

“F. Official Misconduct, Nondisclosure, and Impersonation.

“G. Internal Revenue and Customs Offenses.

“H. Protection of Political Processes.

27 **“Subchapter A.—General Provisions**

“Sec.

“2-6A1. Definition of Terms.

28 **“§ 2-6A1. Definition of Terms**

29 “As used in this chapter, unless it is otherwise provided or a different
30 meaning plainly is required:

31 “(1) ‘approval’ includes recommendation, failure to disap-
32 prove, or any other manifestation of favor or acquiescence;

1 “(2) ‘authorized agency’ means an agency authorized to issue
2 subpoenas or similar process supported by a sanction of this
3 chapter;

4 “(3) ‘disapproval’ includes failure to approve, or any other
5 manifestation of disfavor or nonacquiescence;

6 “(4) ‘governmental matter’ is a matter within the jurisdiction,
7 including investigative jurisdiction, of a government agency;

8 “(5) ‘information’ includes a book, paper, document, record, or
9 other tangible object;

10 “(6) ‘juror’ means a grand juror or a petit juror, including a
11 human being who has been drawn or summoned to attend as a
12 prospective juror;

13 “(7) falsification of a statement is ‘material if’, regardless of
14 the admissibility of the statement under rules of evidence, it
15 could have affected the course or outcome of the official proceeding
16 or the disposition of the matter in which the statement is made;

17 “(8) ‘object’ includes any animate or inanimate thing;

18 “(9) ‘statement’ means any representation, but includes a rep-
19 resentation of opinion, belief, or other state of mind only if the
20 representation clearly relates to state of mind apart from or in
21 addition to any facts which are the subject of the representation;

22 “(10) ‘tax’ means a tax imposed by a Federal statute, an exac-
23 tion denominated a ‘tax’ by a Federal statute, and any penalty,
24 addition to tax, additional amount, or interest on such sum, but
25 does not include tariffs or customs duties or tolls, levies, or charges
26 which are not denominated a ‘tax’ by a Federal statute; and

27 “(11) ‘tax return’ means a written report of the taxpayer’s tax
28 obligations which is required to be filed by a Federal statute or
29 regulation issued under such statute, including reports of taxes
30 withheld or collected, income tax returns, estate and gift tax re-
31 turns, excise and other tax returns of any individual, corporation,
32 or other entity required to file returns and pay taxes in conjunc-
33 tion with a tax return, but does not include interim reports, in-
34 formation returns, or returns of estimated tax.

35 **“Subchapter B.—Physical Obstruction of Government Function**
36 **and Related Offenses**

“Sec.

“2-6B1. Physical Obstruction of Government Function.

“2-6B2. Preventing Arrest, Search, or Discharge of Other Duties.

“2-6B3. Hindering Law Enforcement.

“2-6B4. Bail Jumping.

“2-6B5. Escape.

“2-6B6. Contraband.

“2-6B7. Flight to Avoid Prosecution or Giving Testimony.

1 **“§ 2-6B1. Physical Obstruction of Government Function**

2 “(a) OFFENSE.—A person is guilty of an offense if, by physical in-
3 terference or similar obstacle, he intentionally obstructs an official pro-
4 ceeding or other government function.

5 “(b) GRADING.—The offense is a Class E felony.

6 “(c) COMPOUND GRADING.—The offense is:

7 “(1) a Class A felony if any of the following additional of-
8 fenses is committed: murder or aggravated kidnapping; or

9 “(2) a Class B felony if any of the following additional of-
10 fenses is committed: maiming, aggravated arson, or aggravated
11 malicious mischief.

12 “(d) JURISDICTION.—Federal jurisdiction exists when the official
13 proceeding or other government function is Federal.

14 **“§ 2-6B2. Preventing Arrest, Search, or Discharge of other Duties**

15 “(a) OFFENSE.—A person is guilty of an offense if he intentionally
16 prevents a public servant from effecting an arrest of such person or
17 another person, from executing an order or other process for arrest,
18 search and seizure, or the production of evidence, or from discharging
19 any other official duty, by creating a substantial risk of bodily in-
20 jury to the public servant or to anyone except such person, or by
21 employing means reasonably requiring substantial force to overcome
22 resistance to effect the arrest, the execution, or the discharge of the
23 other duty.

24 “(b) GRADING.—The offense is a Class D felony.

25 “(c) COMPOUND GRADING.—The offense is:

26 “(1) a Class A felony if any of the following additional of-
27 fenses is committed: murder or aggravated kidnapping; or

28 “(2) a Class B felony if any of the following additional of-
29 fenses is committed: maiming, aggravated arson, or aggravated
30 malicious mischief.

31 “(d) JURISDICTION.—Federal jurisdiction exists when the public ser-
32 vant or the official duty is Federal.

33 **“§ 2-6B3. Hindering Law Enforcement**

34 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

35 “(1) interferes with, hinders, delays, or prevents the discovery,
36 apprehension, prosecution, conviction, or punishment of another
37 person for conduct constituting, in fact, an offense by:

38 “(i) aiding, sheltering, employing, or concealing such
39 person;

1 “(ii) providing such person with a weapon, money, trans-
2 portation, disguise, or other means of avoiding discovery or
3 apprehension;

4 “(iii) concealing, altering, mutilating, or destroying a
5 document or thing, regardless of its admissibility in evi-
6 dence; or

7 “(iv) warning such person of impending discovery or
8 apprehension;

9 “(2) aids another person to escape from official detention; or

10 “(3) secretes, disguises, or converts the proceeds of conduct
11 constituting, in fact, an offense, or otherwise to profit from such
12 conduct.

13 “(b) GRADING.—The offense is a Class D felony.

14 “(c) COMPOUND GRADING.—The offense is:

15 “(1) a Class A felony if any of the following additional of-
16 fenses is committed: murder or aggravated kidnapping; or

17 “(2) a Class B felony if any of the following additional of-
18 fenses is committed: maiming, aggravated arson, or aggravated
19 malicious mischief.

20 “(d) JURISDICTION.—Federal jurisdiction exists when the offense
21 or the official detention is Federal.

22 **“§ 2-6B4. Bail Jumping**

23 “(a) OFFENSE.—A person is guilty of bail jumping if, having been
24 released pending trial, sentencing, appeal, or otherwise upon condition
25 or undertaking that he appear before a court or judicial officer as re-
26 quired, he fails to appear as required.

27 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense that the
28 defendant was prevented from appearing at the specified time and
29 place by circumstances to the creation of which he did not contribute in
30 reckless disregard of the requirement to appear.

31 “(c) GRADING.—The offense is a Class D felony except that the of-
32 fense shall be of the same class as the highest offense for which the de-
33 fendant was arrested or with which the defendant is charged when
34 such offense is of a higher class.

35 “(d) JURISDICTION.—Federal jurisdiction exists if the defendant
36 was released by a court or judicial officer which is Federal.

37 **“§ 2-6B5. Escape**

38 “(a) OFFENSE.—A person is guilty of escape if, without authority in
39 fact, he:

1 “(1) removes himself from official detention; or

2 “(2) fails to return to official detention following temporary
3 leave granted for a specified purpose or limited period.

4 “(b) **AFFIRMATIVE DEFENSE.**—It is an affirmative defense under
5 subsection (a) (2) that the defendant was prevented from return-
6 ing at the specified time and place by circumstances to the creation
7 of which he did not contribute in reckless disregard of the require-
8 ment to return.

9 “(c) **GRADING.**—The offense is a Class B felony if the person uses
10 a firearm, destructive device, or other dangerous weapon. Otherwise
11 it is a Class D felony.

12 “(d) **COMPOUND GRADING.**—The offense is:

13 “(1) a Class A felony if any of the following additional offenses
14 is committed: murder or aggravated kidnapping; or

15 “(2) a Class B felony if any of the following additional offenses
16 is committed: maiming, aggravated arson, or aggravated malici-
17 ous mischief.

18 “(e) **JURISDICTION.**—Federal jurisdiction exists when the official
19 detention is Federal.

20 **“§ 2-6B6. Contraband**

21 “(a) **OFFENSE.**—A person is guilty of an offense if:

22 “(1) he knowingly provides an inmate of a correctional facility
23 with a tool, weapon, or other object which may be useful for
24 escape, or with any dangerous, abusable, or restricted drug;

25 “(2) being an inmate of a correctional facility, he procures,
26 makes, or otherwise provides himself with, or has in his possession,
27 a tool, weapon, or other object which may be useful for escape,
28 or with any dangerous, abusable, or restricted drug; or

29 “(3) contrary, in fact, to a statute or a rule, regulation, or order
30 issued under such statute, he introduces into or takes or sends
31 from a correctional facility any object, matter, or thing, including
32 a communication.

33 “(b) **GRADING.**—The offense defined in:

34 “(1) subsections (a) (1) and (a) (2) is a Class B felony if the
35 object is a firearm, destructive device, or other dangerous weapon;

36 “(2) subsection (a) (1) and (a) (2) is a Class C felony; and

37 “(3) subsection (a) (3) is a Class E felony.

38 “(c) **JURISDICTION.**—Federal jurisdiction exists when the correc-
39 tional facility or inmate is Federal.

1 **“§ 2-6B7. Flight to Avoid Prosecution or Giving Testimony**

2 “(a) **OFFENSE.**—A person is guilty of an offense if he takes flight
3 with intent :

4 “(1) to avoid prosecution, or official detention after prosecution,
5 under the laws of the place from which he flees, for an attempt or
6 conspiracy to commit, or commission of :

7 “(i) an offense involving, in fact, the intentional infliction
8 of bodily injury, property damage, or property destruction
9 by fire or explosion ; or

10 “(ii) an offense which is punishable, in fact, under the laws
11 of the place from which such person flees by a term of im-
12 prisonment in excess of one year ; or

13 “(2) to avoid :

14 “(i) appearing as a witness, producing information, or
15 giving testimony in an official proceeding in such place in
16 which the commission of an offense, in fact, described in para-
17 graphs (1) (i) or (1) (ii) is charged or under investigation ;
18 or

19 “(ii) contempt proceedings or other criminal prosecution,
20 or official detention after conviction, for such avoidance.

21 “(b) **VENUE.**—Violations of this section may be prosecuted only in
22 the Federal judicial district in which the original offense or contempt
23 was alleged to have been committed or in which the defendant was
24 held in official detention.

25 “(c) **GRADING.**—The offense is a Class C felony.

26 “(d) **JURISDICTION.**—Federal jurisdiction exists if the offense is
27 committed within the jurisdiction defined in section 1-1A4(12) (com-
28 merce jurisdiction).

29 **“Subchapter C.—Obstruction of Justice**

“Sec.

“2-6C1. Obstruction of Justice.

“2-6C2. Impeding Justice.

“2-6C3. Harassment of Juror.

“2-6C4. Demonstrating to Influence Judicial Proceeding.

“2-6C5. Eavesdropping on Jury Deliberations.

“2-6C6. Criminal Contempt.

30 **“§ 2-6C1. Obstruction of Justice**

31 “(a) **OFFENSE.**—A person is guilty of obstruction of justice if :

32 “(1) he uses force, threat of force, deception, or bribery :

33 “(i) with intent to influence another person’s testimony or
34 the production of information or object in an official pro-
35 ceeding ; or

1 “(ii) with intent to induce or otherwise cause another
2 person:

3 “(A) to withhold any testimony, information, or object
4 from an official proceeding, whether or not the other
5 person would be legally privileged to do so;

6 “(B) to engage in conduct which, in fact, constitutes
7 a violation of subsection (a) (2);

8 “(C) to elude legal process summoning him to testify
9 or produce information or an object in an official
10 proceeding; or

11 “(D) to absent himself from an official proceeding to
12 which he has been summoned;

13 “(2) with intent to impair the accuracy or availability of
14 information or an object in an official proceeding or for the
15 purposes of process, he alters, destroys, mutilates, conceals, or
16 removes such information or an object;

17 “(3) with intent to hinder, delay, or prevent the communica-
18 tion of information to a law enforcement officer by another per-
19 son, he deceives such other person or employs force, threat of
20 force, or engages in conduct constituting, in fact, bribery with
21 such other person, or

22 “(4) he endeavors in any other manner to obstruct or impede
23 the due administration of justice or of a law of the United States,
24 including the exercise of the congressional power of inquiry.

25 “(b) DEFENSE PRECLUDED.—It is not a defense that an official pro-
26 ceeding was not pending or about to be instituted.

27 “(c) GRADING.—The offense is a Class D felony.

28 “(d) COMPOUND GRADING.—The offense is:

29 “(1) a Class A felony if any of the following additional of-
30 fenses is committed: murder or aggravated kidnapping; or

31 “(2) a Class B felony if any of the following additional of-
32 fenses is committed: maiming, aggravated arson, or aggravated
33 malicious mischief.

34 “(e) JURISDICTION.—Federal jurisdiction exists when the official
35 proceeding, the administration of justice or law, or the law enforce-
36 ment officer is Federal.

37 **“§ 2-6C2. Impeding Justice**

38 “(a) OFFENSE.—A person is guilty of impeding justice if:

39 “(1) having been served and ordered to appear at a specified
40 time and place to testify or to produce information or an object

1 in an official proceeding or otherwise he fails, without privilege,
2 to appear or to produce such information or an object at that time
3 and place;

4 “(2) attending an official proceeding, he fails, without privilege,
5 to comply with an order:

6 “(i) to occupy or remain at the designated place from
7 which he is to testify as a witness in such proceeding; or

8 “(ii) to be sworn as a witness in such proceeding;

9 “(3) he refuses, without privilege, to answer a question or to
10 produce information or an object:

11 “(i) pertinent to the subject under inquiry in an official
12 proceeding before either House or any Committee, Joint Com-
13 mittee, or Subcommittee of Congress and continues in such a
14 refusal after the presiding official directs him to answer and
15 advises him that his continuing refusal may make him subject
16 to criminal prosecution; or

17 “(ii) in any other official proceeding and continues in such
18 refusal after a court, judge, magistrate, or referee in bank-
19 ruptcy directs or orders him to answer or produce such infor-
20 mation or an object and advises him that his continuing
21 refusal may make him subject to criminal prosecution;

22 “(4) he intentionally hinders an official proceeding by noise,
23 violent or tumultuous behavior, or disturbance; or

24 “(5) he disobeys or resists a temporary restraining order or
25 preliminary or final injunction or other final order of a court,
26 other than an order for the payment of money.

27 “(b) DEFENSE.—It is a defense under subsection (a) (1) that the
28 defendant was prevented from appearing at the specified time and
29 place or was unable to produce the information or an object because
30 of circumstances to the creation of which he did not contribute in
31 reckless disregard of the requirement to appear or to produce.

32 “(c) FINES.—A person convicted under subsection (a) (5) may be
33 sentenced to pay a fine in any amount the court deems necessary in
34 the interest of justice.

35 “(d) GRADING.—The offense is a Class E felony.

36 “(e) JURISDICTION.—Federal jurisdiction exists when the order,
37 the official proceeding, or the court is Federal.

38 **“§ 2-6C3. Harassment of Juror.**

39 “(a) OFFENSE.—A person is guilty of harassment of juror if, with
40 intent to influence the official conduct of another person as a juror or
41 because of such conduct, he

1 “(1) harasses or alarms such person; or

2 “(2) questions, interviews, or otherwise communicates with
3 such person with respect to the verdict or deliberations of the
4 jury of which such person is or was a member, except upon
5 motion to the court with good cause shown.

6 Conduct directed against the juror’s spouse or other relative residing
7 in the same household with the juror is conduct directed against
8 the juror.

9 “(b) GRADING.—The offense is a Class E felony.

10 “(c) COMPOUND GRADING.—The offense is:

11 “(1) a Class A felony if any of the following additional offenses
12 is committed: murder or aggravated kidnapping; or

13 “(2) a Class B felony if any of the following additional offenses
14 is committed: maiming, aggravated arson, or aggravated mali-
15 cious mischief.

16 “(c) JURISDICTION.—Federal jurisdiction exists when the juror is
17 Federal.

18 **“§ 2-6C4. Demonstrating to Influence Judicial Proceeding**

19 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
20 influence a judge, juror, or witness in the discharge of his official con-
21 duct in a judicial proceeding, he pickets, parades, uses a sound-amplify-
22 ing device, displays a placard or sign containing written or pictorial
23 matter, or otherwise engages in a demonstration in or on the grounds
24 of a building housing a court of the United States or a residence or
25 place of occupancy of such judge, juror, or witness, or on a public way
26 less than 200 feet from such building, residence, or place.

27 “(b) GRADING.—The offense is a misdemeanor.

28 “(c) JURISDICTION.—Federal jurisdiction exists when the judicial
29 proceeding is Federal.

30 **“§ 2-6C5. Eavesdropping on Jury Deliberations**

31 “(a) OFFENSE.—A person is guilty of an offense if he intentionally
32 listens to or observes the proceedings of any jury of which he is not a
33 member while such jury is deliberating or voting.

34 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to this
35 section or to section 2-7G1 (Eavesdropping) when the conduct in-
36 volves a jury that the defendant was a recognized scholar and that his
37 conduct was part of a legal or social science study approved in advance
38 by the chief judge of the court.

39 “(c) GRADING.—The offense is a Class E felony.

40 “(d) JURISDICTION.—Federal jurisdiction exists when the jury is
41 Federal.

1 **“§ 2-6C6. Criminal Contempt**

2 “(a) OFFENSE.—A person is guilty of criminal contempt of a court
3 if he manifests such contempt of the authority of such court, and none
4 other, as:

5 “(1) misconduct of any person in its presence or so near to it
6 as to obstruct the administration of justice;

7 “(2) misconduct of any of its officers in their official conduct; or

8 “(3) disobedience or resistance to its lawful writ, process, order,
9 rule, decree, or command.

10 “(b) GRADING.—The court may impose such sentence it deems neces-
11 sary in the interest of justice to vindicate its authority.

12 “(c) JURISDICTION.—Federal jurisdiction exists when the court is
13 Federal.

14 **“Subchapter D.—Perjury, False Statement, and Integrity of**
15 **Public Record**

“Sec.

“2-6D1. Perjury.

“2-6D2. False Statement.

“2-6D3. Tampering With Public Record.

16 **“§ 2-6D1. Perjury**

17 “(a) OFFENSE.—A person is guilty of perjury if, in an official pro-
18 ceeding, he makes a false statement under oath or swears the truth of
19 a false statement previously made, when he does not believe such
20 statement to be true and the statement is, in fact, material.

21 “(b) DEFENSE PRECLUDED.—It is not a defense that the oath was
22 administered or taken in an irregular manner or that the defendant
23 was not competent to make such statement. A document purporting
24 to be made upon oath at a time when the person represents it as being
25 so verified is duly sworn.

26 “(c) DEFENSE.—It is a defense that the defendant retracted the
27 falsification in the course of the official proceeding in which it was
28 made, if he did so before it became manifest that the falsification was
29 or would be exposed and before the falsification substantially affected
30 the proceeding or matter. It is a defense under subsection (e) that
31 the defendant at the time he made each statement believed the state-
32 ment was true.

33 “(d) EVIDENCE.—Proof beyond a reasonable doubt is sufficient for
34 conviction. Commission of perjury need not be proved by any particu-
35 lar number of witnesses or by documentary or other types of evidence.
36 Materiality is a question of law.

1 “(e) **INCONSISTENT STATEMENTS.**—Where, in the course of one or
2 more official proceedings, the defendant made a statement under oath
3 inconsistent with another statement made by him under oath to the
4 degree that one of them is necessarily false, both having been made
5 within the period of the statute of limitations, the prosecution may
6 set forth the statements in a single count alleging in the alternative
7 that one or the other was false and not believed to be true. Proof that
8 the defendant made such statements shall constitute a *prima facie* case
9 that one or the other of the statements was false; but the defendant
10 may be convicted under this section only if each of such statements
11 was, in fact, material to the official proceeding in which it was made.

12 “(f) **GRADING.**—The offense is a Class C felony.

13 “(g) **JURISDICTION.**—Federal jurisdiction exists when the official
14 proceeding is Federal.

15 **“§ 2-6D2. False Statement**

16 “(a) **OFFENSE.**—A person is guilty of an offense if he :

17 “(1) knowingly makes a false statement ;

18 “(2) knowingly creates a false impression in a written state-
19 ment in connection with application for a pecuniary or other
20 benefit, by omitting information necessary to prevent a statement
21 in such application from being misleading ;

22 “(3) submits or invites reliance on any writing which he knows
23 to be forged, counterfeited, or otherwise lacking in authenticity ;

24 “(4) submits or invites reliance on any sample, specimen, map,
25 boundary-mark, or other object, which he knows to be false ;

26 “(5) uses a trick, scheme, or device, which he knows to be mis-
27 leading ;

28 “(6) knowingly makes or conveys a false statement of fact, in
29 time of war, concerning losses, plans, operations, or conduct of
30 the armed forces of the United States or those of the enemy,
31 civilian or military catastrophe, or other report likely to affect the
32 strategy or tactics of the armed services of the United States or
33 likely to create general panic or serious disruption ;

34 “(7) makes a false statement under oath when he does not be-
35 lieve such statement to be true and the statement is, in fact, ma-
36 terial, in relation to a dispute between a foreign government and
37 the United States :

38 “(i) with knowledge that it may be used to influence the
39 measures or conduct of any foreign government or public

1 servant of such government to the injury of the United
2 States; or

3 (ii) with intent to influence any measure of or action by
4 the United States to the injury of the United States; or

5 “(8) knowingly deceives or makes a false statement as to a
6 matter, in fact, material to the purpose of an examination by the
7 government of an object being introduced into the United States.

8 “(b) EVIDENCE.—Materiality is a question of law.

9 “(c) GRADING.—(1) The offense defined in subsection (a) (6),
10 (a) (7), and (a) (8) is a Class C felony.

11 “(2) The offense is a Class D felony if the statement, writing, ob-
12 ject, or device is false in a material respect. Otherwise it is a Class E
13 felony.

14 “(d) JURISDICTION.—Federal jurisdiction exists when the statement,
15 writing, object, or device involves the Federal government or a Fed-
16 eral governmental matter or when the offense is committed within
17 the jurisdiction defined in section 1-1A4(28) (financial institution
18 jurisdiction).

19 **“§ 2-6D3. Tampering With Public Record**

20 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

21 “(1) makes a false entry in or false alteration of a government
22 record; or

23 “(2) without authority, destroys, conceals, removes, or other-
24 wise impairs the accuracy or availability of a government record.

25 “(b) GRADING.—The offense is a Class E felony.

26 “(c) DEFINITION.—As used in this section, ‘government record’
27 means:

28 “(1) any record, document, or thing belonging to, or received
29 or kept by the government for information or record; or

30 “(2) any other record, document, or thing required to be kept
31 under a statute which, in fact, expressly invokes the sanctions of
32 this section.

33 “(d) JURISDICTION.—Federal jurisdiction exists when the govern-
34 ment is Federal.

35 **“Subchapter E.—Bribery and Intimidation**

“Sec.

“2-6E1. Bribery.

“2-6E2. Graft.

“2-6E3. Threatening a Public Servant.

“2-6E4. Retaliation.

“2-6E5. Misuse of Personnel Authority.

1 **“§ 2-6E1. Bribery**

2 “(a) **OFFENSE.**—A person is guilty of bribery if:

3 “(1) with intent to influence the official conduct of another per-
4 son as a public servant, he confers a pecuniary benefit upon a
5 public servant; or

6 “(2) being a public servant, upon understanding that his offi-
7 cial conduct as a public servant will be affected by it, he know-
8 ingly accepts a pecuniary benefit from another person.

9 “(b) **DEFENSE PRECLUDED.**—It is not a defense that a defendant was
10 not qualified to conduct himself in the desired way because
11 he had not yet assumed office, lacked jurisdiction, or for any other
12 reason. It is not a defense that, by reason of the same conduct, the
13 defendant also committed coercion, theft, or extortion.

14 “(c) **PRIMA FACIE CASE.**—A prima facie case is established upon
15 proof that the defendant knew that a pecuniary benefit was conferred
16 by or accepted from a person having an interest in an imminent or
17 pending:

18 “(1) examination, investigation, arrest, or official proceeding;
19 or

20 “(2) bid, contract, claim, or application, and that interest could
21 be affected by the person’s performance or nonperformance of
22 his official conduct as a public servant.

23 “(d) **GRADING.**—The offense is a Class C felony.

24 “(e) **JURISDICTION.**—Federal jurisdiction exists when the public
25 servant is Federal or when the offense is committed within the juris-
26 diction defined in section 1-1A4(12) (commerce jurisdiction).

27 **“§ 2-6E2. Graft**

28 “(a) **OFFENSE.**—Except as otherwise provided, a person is guilty of
29 graft if:

30 “(1) he knowingly confers a pecuniary benefit:

31 “(i) upon a public servant for approval or disapproval by
32 a public servant of a person for appointment, employment,
33 advancement, or retention as a public servant;

34 “(ii) upon another person for exerting or procuring an-
35 other person to exert special influence upon a public servant
36 with respect to official conduct as a public servant; or

37 “(iii) upon a public servant as compensation for advice or
38 other assistance in preparing or promoting a bill, contract,
39 claim, or other matter which is or is likely to be subject to such
40 person’s official conduct as a public servant; or

1 “(2) being a public servant, he accepts a pecuniary benefit from
2 another person :

3 “(i) for approval or disapproval by a public servant of a
4 person for appointment, employment, advancement, or reten-
5 tion as a public servant ;

6 “(ii) for exerting or procuring another person to exert
7 influence upon a public servant with respect to official conduct
8 as a public servant ; or

9 “(iii) as compensation for advice or other assistance in
10 preparing or promoting a bill, contract, claim, or other mat-
11 ter which is or is likely to be subject to such person’s official
12 conduct as a public servant.

13 “(b) DEFENSES PRECLUDED.—It is not a defense that a defendant
14 was not qualified to conduct himself in the desired way because he
15 had not yet assumed office, lacked jurisdiction, or for any other reason.
16 It is not a defense that, by reason of the same conduct, the defendant
17 also committed coercion, theft, or extortion.

18 “(c) PRIMA FACIE CASE.—A prima facie case is established upon
19 proof that the defendant knew that a pecuniary benefit was conferred
20 by or accepted from a person having an interest in an imminent or
21 pending :

22 “(1) examination, investigation, arrest, or official proceeding ; or

23 “(2) bid, contract, claim, or application, and that interest could
24 be affected by the recipient’s performance or nonperformance of
25 his official conduct as a public servant.

26 “(d) GRADING.—The offense is a Class D felony.

27 “(e) DEFINITION.—As used in this section, ‘special influence’ means
28 power to influence through kinship or by reason of position or office
29 in a political party.

30 “(f) JURISDICTION.—Federal jurisdiction exists when the public
31 servant is Federal or when the offense is committed within the juris-
32 diction defined in section 1-1A4(12) (commerce jurisdiction).

33 **§ 2-6E3. Threatening a Public Servant**

34 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
35 influence another person’s official conduct as a public servant, he threat-
36 ens to engage in conduct, in fact, constituting an offense against person
37 or property.

38 “(b) DEFENSE PRECLUDED.—It is not a defense that a person whom
39 the defendant sought to influence was not qualified to act in the desired
40 way because he had not yet assumed office, lacked jurisdiction, or for
41 any other reason.

1 “(c) GRADING.—The offense is a Class D felony.

2 “(d) COMPOUND GRADING.—The offense is:

3 “(1) a Class A felony if any of the following additional
4 offenses is committed: murder or aggravated kidnapping; or

5 “(2) a Class B felony if any of the following additional of-
6 fenses is committed; maiming, aggravated arson, or aggravated
7 malicious mischief.

8 “(e) JURISDICTION.—Federal jurisdiction exists when the public ser-
9 vant is Federal.

10 **“§ 2-6E4. Retaliation**

11 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
12 retaliate for the conduct of another person as public servant, witness,
13 or person who has communicated information to the government in
14 connection with any governmental function, he harms such person or
15 another person.

16 “(b) GRADING.—The offense is a Class E felony.

17 “(c) COMPOUND GRADING.—The offense is:

18 “(1) a Class A felony if any of the following additional of-
19 fenses is committed: murder or aggravated kidnapping; or

20 “(2) a Class B felony if any of the following additional of-
21 fenses is committed: maiming, aggravated arson, or aggravated
22 malicious mischief.

23 “(d) DEFINITION.—As used in this section, ‘harm’ means loss, dis-
24 advantage, or injury, or anything reasonably so regarded by the per-
25 son affected, including loss, disadvantage, or injury to any other per-
26 son in whose welfare such person is interested.

27 “(e) JURISDICTION.—Federal jurisdiction exists when the govern-
28 ment is Federal.

29 **“§ 2-6E5. Misuse of Personnel Authority**

30 “(a) OFFENSE.—A public servant is guilty of an offense if, with in-
31 tent to reward or to retaliate for the giving or withholding or neglect-
32 ing to make contribution of money or other benefit, he discharges,
33 promotes, or degrades another public servant, or in any manner
34 changes or promises or threatens to change official rank or compensa-
35 tion of such other public servant.

36 “(b) GRADING.—The offense is a misdemeanor.

37 “(c) JURISDICTION.—Federal jurisdiction exists when the public
38 servant is Federal.

1 “(2) takes action as a public servant which is likely to benefit
2 him as a result of an acquisition of pecuniary interest in any prop-
3 erty, transaction or enterprise, or of a speculation or wager, which
4 he made or caused to be made or aided another person to make, in
5 contemplation of such conduct by himself as a public servant.

6 “(b) GRADING.—The offense is a Class E felony.

7 “(c) JURISDICTION.—Federal jurisdiction exists when the public
8 servant is Federal.

9 **“§ 2-6F4. Impersonating an Official**

10 “(a) OFFENSE.—A person is guilty of impersonating an official if
11 he falsely pretends to be :

12 “(1) an official and acts as if to exercise the authority of such
13 official; or

14 “(2) an official and acts to obtain a benefit.

15 “(b) DEFENSE PRECLUDED.—It is not a defense that the pretended
16 capacity did not exist or that the pretended authority could not legally
17 or otherwise have been exercised or conferred.

18 “(c) GRADING.—The offense is a Class E felony.

19 “(d) COMPOUND GRADING.—The offense is :

20 “(1) a Class A felony if any of the following additional of-
21 fenses is committed: murder or aggravated kidnapping; or

22 “(2) a Class B felony if any of the following additional of-
23 fenses is committed: maiming, aggravated arson, or aggravated
24 malicious mischief.

25 “(e) DEFINITION.—As used in this section, ‘official’ means a public
26 servant or a foreign official or a former public servant or foreign
27 official.

28 “(f) JURISDICTION.—Federal jurisdiction exists when the public
29 servant is Federal or the official is foreign.

30 **“Subchapter G.—Internal Revenue and Customs Offenses**

“Sec.

“2-6G1. Tax Evasion.

“2-6G2. Disregard of Tax Obligation.

“2-6G3. Trafficking in Taxable Object.

“2-6G4. Smuggling.

31 **“§ 2-6G1. Tax Evasion**

32 “(a) Offense.—A person is guilty of tax evasion where: (1) with
33 intent to evade any tax or its payment, he :

34 “(i) files or causes to be filed a tax return or information re-
35 turn which is false as to an, in fact, material matter;

36 “(ii) removes or conceals assets to evade payment of any tax
37 which is due;

1 “(iii) fails to account for or pay over when due taxes previously
2 collected or withheld, or received from another person with the
3 understanding that they will be paid to the United States;

4 “(iv) removes, destroys, mutilates, alters, or tampers with any
5 property in the custody, control, or possession of the United States
6 or any agent of the United States;

7 “(v) fails to file an income, excise, estate, or gift tax return
8 when due; or

9 “(vi) seeks in any other manner to evade or defeat any income,
10 excise, estate, or gift tax; and

11 “(2) there is due and owing a substantial tax liability.

12 “(b) GRADING.—The offense is:

13 “(1) a Class B felony if the amount of the evasion related tax
14 liability is substantial and equals or exceeds \$100,000;

15 “(2) a Class C felony if the amount of the evasion related tax
16 liability is substantial and equals or exceeds \$10,000; or

17 “(3) a Class D felony if the amount of the evasion related tax
18 liability is substantial but less than \$10,000.

19 “(c) DEFINITIONS.—As used in this section:

20 “(1) ‘with intent to evade’ means with respect to the required
21 conduct or to the required result, a conscious objective to engage in
22 such conduct and to cause the result, with knowledge that the at-
23 tendant circumstances exist.

24 “(2) ‘tax liability’ means

25 “(i) with respect to subsection (a)(ii)(iii) and (iv) that
26 there is a tax liability; and

27 “(ii) with respect to subsection (a)(i)(v) and (vi) that
28 there is a tax deficiency.

29 “(d) JURISDICTION.—Federal jurisdiction exists when the tax is
30 Federal.

31 **“§ 2-6G2. Disregard of Tax Obligation**

32 “(a) OFFENSE.—A person is guilty of an offense, if he knowingly:

33 “(1) fails to file a tax return when due;

34 “(2) engages in an occupation or enterprise without having
35 registered or purchased a stamp when that is required by a provi-
36 sion of title 26, United States Code;

37 “(3) fails to withhold or collect any tax which he is required
38 by law to withhold or collect;

39 “(4) after having received the notice provided for in section
40 7512(a), title 26, United States Code, fails to deposit collected

1 taxes in a special bank account as provided in section 7512(b), or
2 having deposited funds in such account, pays any of them to any-
3 one other than the United States or an authorized agent of the
4 United States; or

5 “(5) fails to furnish a true statement to an employee regard-
6 ing tax withheld as required under section 6051, title 26, United
7 States Code.

8 “(b) GRADING.—The offense is a Class E felony.

9 “(c) JURISDICTION.—Federal jurisdiction exists when the tax is
10 Federal.

11 **“§ 2-6G3. Trafficking in Taxable Object**

12 “(a) OFFENSE.—A person is guilty of an offense if he:

13 “(1) traffics in a taxable object in violation of a Federal reve-
14 nue statute or a rule, regulation, or order issued under such sta-
15 tute; or

16 “(2) possesses distilled spirits, knowing that a tax imposed on
17 it or on the trafficking in it has not been paid.

18 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense that all
19 taxes imposed upon the object or upon trafficking in it were paid prior
20 to the defendant’s trafficking in the object.

21 “(c) PRESUMPTIONS.—Proof that a defendant:

22 “(1) was found in possession of an object which was not in the
23 container required by a statute or a rule, regulation, or order is-
24 sued under such statute, or which did not bear a stamp, certificate,
25 or label required by statute or a rule, regulation, or order issued
26 under such statute, gives rise to a presumption of the culpability
27 specified and that the tax was not paid;

28 “(2) was present at a place where a still or distilling appara-
29 tus was then set up or where mash, wort, or wash was then pos-
30 sessed gives rise to a presumption:

31 “(i) that such defendant was a trafficker in distilled
32 spirits; and

33 “(ii) if the signs or permits were not there displayed as re-
34 quired by statute or a rule, regulation, or order issued under
35 such statute that such person had the culpability specified;
36 and

37 “(3) was in possession of a quantity of distilled spirits in ex-
38 cess of 10 gallons gives rise to a presumption that the possessor was
39 trafficking in such distilled spirits.

1 “(d) **GRADING.**—The offense defined in subsection (a)(1) is a mis-
2 demeanor, except that the offense is a Class D felony if the taxable
3 object is distilled spirits and the person is not qualified under title 26,
4 United States Code, as a distiller, bonded warehouseman, rectifier, or
5 bottler of distilled spirits or is so qualified and acts with intent to
6 evade the tax. Otherwise, if the taxable object is distilled spirits, the
7 offense is a Class E felony.

8 “(e) **JURISDICTION.**—Federal jurisdiction exists when the tax is
9 Federal.

10 **“§ 2-6G4. Smuggling**

11 “(a) **OFFENSE.**—A person is guilty of smuggling if he knowingly:

12 “(1) evades examination by the government of an object being
13 introduced into the United States;

14 “(2) evades assessment or payment when due of the customs
15 duty upon an object being introduced into the United States;

16 “(3) introduces an object into the United States the introduc-
17 tion of which is, in fact, prohibited, whether absolutely or condi-
18 tionally, under a Federal statute or rule, regulation, or order
19 issued under such statute; or

20 “(4) receives, conceals, buys, sells, or in any manner aids the
21 transportation, concealment, distribution, or sale of an object in-
22 troduced into the United States, in fact, prohibited by this sec-
23 tion, knowing that such object was smuggled or that it had prob-
24 ably been smuggled into the United States.

25 “(b) **EVIDENCE.**—The value of an object shall be its highest value,
26 determined by any reasonable standard, regardless of its value for
27 purposes of determining the amount of duty owing, if any.

28 “(c) **PROCEDURE.**—Smuggling committed under one scheme or course
29 of conduct may be charged as one offense, and the value of, or the
30 duty on, the objects introduced may be aggregated in determining
31 the grade of the offense.

32 “(d) **PRESUMPTION.**—Proof that defendant possessed an object,
33 in fact, recently smuggled into the United States, gives rise to a pre-
34 sumption of the culpability specified.

35 “(e) **GRADING.**—The offense is a Class C felony if:

36 “(1) the value of the object exceeds \$500;

37 “(2) the duty which would have been due on the object or
38 objects exceeds \$100;

“(3) the object is being or was introduced for use in a business or for trafficking;

“(4) the object is firearms, explosives, or dangerous, abusable, or restricted drugs; or

“(5) introduction of the object is prohibited by a statute or rule, regulation, or order issued under such statute, whether absolutely or conditionally, because the object may cause or be used to cause bodily injury or property damage.

Otherwise it is a Class E felony.

“(f) DEFINITION.—As used in this section, ‘United States’ does not include the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman’s Reef, Johnston Island, or Guam, unless a statute or rule, regulation, or order issued under such statute specifically provides otherwise for smuggling.

“(g) JURISDICTION.—Federal jurisdiction exists when an object is introduced into the United States.

“Subchapter H.—Protection of Political Processes

“Sec.

“2-6H1. Election Fraud.

“2-6H2. Wrongful Political Contribution.

“2-6H3. Foreign Political Influence.

“§ 2-6H1. Election Fraud

“(a) OFFENSE.—A person is guilty of an offense if, in connection with any primary, general, or special election, he knowingly:

“(1) makes a false voting registration;

“(2) confers a pecuniary benefit upon another person for such person’s voting or withholding his vote or voting for or against any candidate or issue, or for such conduct by another person;

“(3) accepts a pecuniary benefit for conduct, in fact, prohibited under paragraph (1) or (2); or

“(4) obstructs, interferes, or impedes in any other manner with the conduct of such election or registration for it.

“(b) GRADING.—The offense is a Class D felony.

“(c) COMPOUND GRADING.—The offense is:

“(1) a Class A felony if any of the following additional offenses is committed: murder or aggravated kidnapping; or

“(2) a Class B felony if any of the following additional offenses is committed: maiming, aggravated arson, or aggravated malicious mischief.

“(d) JURISDICTION.—Federal jurisdiction exists when the election involves a candidate for a Federal office.

1 **“§ 2-6H2. Wrongful Political Contribution**

2 “(a) OFFENSE.—A person is guilty of an offense if:

3 “(1) he is a public servant and he solicits a contribution for any
4 political purpose from another public servant or, in response to
5 such solicitation with respect to a public servant for whom he
6 works, he makes such a contribution to another public servant;
7 or

8 “(2) he solicits or receives a political contribution in a building
9 or facility.

10 “(b) SOLICITATION PRECLUDED.—Section 1-2A3 (criminal solici-
11 tation) is inapplicable under this section.

12 “(c) GRADING.—The offense is a Class E felony.

13 “(d) JURISDICTION.—Federal jurisdiction exists when the public
14 servant or the building or facility is Federal.

15 **“§ 2-6H3. Foreign Political Influence**

16 “(a) OFFENSE.—A person is guilty of an offense if:

17 “(1) being an agent of a foreign principal, he, directly or in-
18 directly, knowingly makes a contribution in connection with a
19 primary, special, or general election, or a political convention or
20 caucus held to select candidates for political office; or

21 “(2) he, directly or indirectly, knowingly accepts a contri-
22 bution which is, in fact, prohibited by paragraph (1).

23 “(b) GRADING.—The offense is a Class D Felony.

24 “(c) DEFINITIONS.—As used in this section:

25 “(1) ‘agent of foreign principal’ means a person who:

26 (i) acts as an agent, representative, employee, or servant,
27 or a person who acts in any other capacity at the order, request,
28 or under the direction or control, of a foreign principal, and

29 (ii) any substantial portion of whose activities are, directly
30 or indirectly, supervised, directed, or controlled by such
31 foreign principal; and

32 “(2) ‘foreign principal’ has the meaning prescribed in section
33 611(b), title 22, United States Code, but does not include a per-
34 son who is a citizen of the United States.

35 **“Chapter 7.—OFFENSES AGAINST THE PERSON**

“Subchapter

“A. General Provisions.

“B. Homicide.

“C. Assault and Related Offenses.

“D. Kidnapping and Related Offenses.

“E. Sex Offenses.

“F. Civil Rights Offenses.

“G. Interference With Privacy Offenses.

“Subchapter A.—General Provisions

“Sec.

“2-7A1. Definition of Terms.

“§ 2-7A1. Definition of Terms

“As used in this chapter, unless it is otherwise provided or a different meaning plainly is required :

“(1) ‘restrain’ means to restrict the movements of another person without consent or authority, so as to interfere substantially with such person’s liberty by removing him from his place of residence or business or a substantial distance from the vicinity where he is found or by confining him for a substantial period either in the place where the restriction commences or in a place to which he has been moved. Restraint is ‘without consent’ if it is accomplished by physical force, intimidation, or deception, or by any means including acquiescence of the other person if such person is a child less than sixteen years old or an incompetent person where the parent, guardian, or other person or institution having authority over or custody of such person has not acquiesced in the movement or confinement ;

“(2) ‘sexual act’ means sexual contact consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, or the mouth and the vulva. Such contact occurs upon penetration, however slight. Emission is not required ;

“(3) ‘sexual contact’ means any touching of the sexual or other intimate parts of a human being for the purpose of arousing or gratifying sexual desire ; and

“(4) ‘spouse’ means a human being legally married, but does not include such a human being living apart under a decree of judicial separation. Human beings living together as man and wife are deemed to be spouses.

“Subchapter B.—Homicide

“Sec.

“2-7B1. Murder.

“2-7B2. Reckless Homicide.

“2-7B3. Manslaughter.

“2-7B4. Criminally Negligent Homicide.

“2-7B5. Aiding Suicide.

“§ 2-7B.1 Murder

“(a) OFFENSE.—A person is guilty of murder if he intentionally causes the death of another human being.

“(b) INCLUDED OFFENSES.—Reckless homicide, manslaughter, criminally negligent homicide, and aiding suicide are offenses included in murder.

1 “(c) GRADING.—The offense is a Class A felony, but a person con-
2 victed of murder shall be sentenced under section 1-4E1 (sentence of
3 death).

4 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
5 committed within the jurisdiction defined in section 1-1A4(64) (spe-
6 cial jurisdiction); section 1-1A4(35) (high public servant jurisdic-
7 tion); or section 1-1A4(53) (piracy jurisdiction).

8 **“§ 2-7B2. Reckless Homicide**

9 “(a) OFFENSE.—A person is guilty of reckless homicide if he reck-
10 lessly causes the death of another human being under circumstances
11 manifesting extreme indifference to human life. Included in such
12 circumstances are those when such person was engaged in conduct
13 constituting, in fact, the commission of, or an attempt to commit, or
14 immediate flight after committing, or attempting to commit, any
15 felony in which he or any accomplice was armed with a dangerous
16 weapon, or conduct constituting, in fact, assault, kidnapping, rape,
17 arson, burglary, or robbery, and that as a natural and probable con-
18 sequence of the commission, attempted commission, or immediate
19 flight after commission or attempted commission of such conduct he or
20 any accomplice causes the death of another human being.

21 “(b) INCLUDED OFFENSES.—Manslaughter, criminally negligent
22 homicide, and aiding suicide are offenses included in reckless homicide.

23 “(c) GRADING.—The offense is a Class A felony.

24 “(d) JURISDICTION.—Federal jurisdiction exists when the offense
25 is committed within the jurisdiction defined in section 1-1A4(64)
26 (special jurisdiction); section 1-1A4(35) (high public servant jurisdic-
27 tion); or section 1-1A4(53) (piracy jurisdiction).

28 **“§ 2-7B3. Manslaughter**

29 “(a) OFFENSE.—A person is guilty of manslaughter if he:

30 “(1) recklessly causes the death of another human being under
31 circumstances not manifesting extreme indifference to human
32 life; or

33 “(2) causes the death of another human being under circum-
34 stances which would otherwise constitute murder or reckless
35 homicide but does so under the influence of extreme emotional
36 disturbance for which there is reasonable explanation under the
37 circumstances as such person believes them to be.

38 “(b) INCLUDED OFFENSES.—Criminally negligent homicide and aid-
39 ing suicide are offenses included in manslaughter.

40 “(c) NOTICE.—Evidence of extreme emotional disturbance may not
41 be introduced by the defendant unless he files written notice of his

intention to introduce such evidence at the time he enters his plea or within ten days of such time or at such later time as the court may for good cause permit.

“(d) **GRADING.**—The offense is a Class B felony.

“(e) **JURISDICTION.**—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(35) (high public servant jurisdiction); or section 1-1A4(53) (piracy jurisdiction).

§ 2-7B4. Criminally Negligent Homicide

“(a) **OFFENSE.**—A person is guilty of criminally negligent homicide, if with criminal negligence he causes the death of another human being.

“(b) **GRADING.**—The offense is a Class D felony.

“(c) **JURISDICTION.**—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(35) (high public servant jurisdiction); or section 1-1A4(53) (piracy jurisdiction).

§ 2-7B5. Aiding Suicide

“(a) **OFFENSE.**—A person is guilty of aiding suicide if he recklessly aids another human being to commit suicide and such human being commits or attempts to commit suicide.

“(b) **GRADING.**—The offense is a Class D felony.

“(c) **JURISDICTION.**—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(35) (high public servant jurisdiction); or section 1-1A4(53) (piracy jurisdiction).

“Subchapter C.—Assault and Related Offenses

“Sec.

“2-7C1. Maiming.

“2-7C2. Aggravated Assault.

“2-7C3. Assault.

“2-7C4. Menacing.

“2-7C5. Terrorizing.

“§ 2-7C1. Maiming

“(a) **OFFENSE.**—A person is guilty of maiming if he intentionally causes serious bodily injury which is likely to be permanent to another human being.

“(b) **INCLUDED OFFENSES.**—Aggravated assault and assault are offenses included in maiming.

“(c) **GRADING.**—The offense is a Class B felony.

“(d) **JURISDICTION.**—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (spe-

1 cial jurisdiction); section 1-1A4(35) (high public servant jurisdic-
2 tion); or section 1-1A4(53) (piracy jurisdiction).

3 **“§ 2-7C2. Aggravated Assault**

4 “(a) OFFENSE.—A person is guilty of aggravated assault if he:

5 “(1) recklessly causes serious bodily injury to another human
6 being; or

7 “(2) causes, in fact, bodily injury to another human being with
8 a dangerous weapon.

9 “(b) INCLUDED OFFENSE.—Assault is an offense included in aggra-
10 vated assault.

11 “(c) GRADING.—The offense is a Class D felony.

12 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
13 committed within the jurisdiction defined in section 1-1A4(64) (special
14 jurisdiction); section 1-1A4(35) (high public servant jurisdiction);
15 or section 1-1A4(53) (piracy jurisdiction).

16 **“§ 2-7C3. Assault**

17 “(a) OFFENSE.—A person is guilty of assault if he causes, in fact,
18 bodily injury to another human being.

19 “(b) GRADING.—The offense is a Class E felony.

20 “(c) JURISDICTION.—Federal jurisdiction exists when the offense is
21 committed within the jurisdiction defined in section 1-1A4(64) (spe-
22 cial jurisdiction); section 1-1A4(35) (high public servant jurisdic-
23 tion); or section 1-1A4(53) (piracy jurisdiction).

24 **“§ 2-7C4. Menacing**

25 “(a) OFFENSE.—A person is guilty of menacing if he knowingly
26 places another human being in reasonable fear of imminent serious
27 bodily injury.

28 “(b) GRADING.—The offense is a misdemeanor.

29 “(c) JURISDICTION.—Federal jurisdiction exists when the offense is
30 committed within the jurisdiction defined in section 1-1A4(64) (spe-
31 cial jurisdiction); section 1-1A4(35) (high public servant jurisdic-
32 tion); or section 1-1A4(53) (piracy jurisdiction).

33 **“§ 2-7C5. Terrorizing**

34 “(a) OFFENSE.—A person is guilty of terrorizing if he:

35 “(1) intentionally threatens to engage in any conduct which
36 constitutes, in fact, an offense against the President of the United
37 States, the President-elect, the Vice President or the officer next
38 in order of succession to the office of President if there is no
39 Vice President, the Vice President-elect, or any person who is
40 acting as President under the Constitution and laws of the United
41 States:

1 “(i) by a communication addressed to or intended to come to
2 the attention of such official or his staff; or

3 “(ii) under any circumstances in which the threat is likely
4 to be taken seriously as an expression of settled purpose; or

5 “(2) knowingly threatens to engage in any conduct which
6 constitutes, in fact, a crime and the natural and probable consequence
7 of such threat or threats, whether or not such consequence
8 occurs, is, in fact:

9 “(i) to place another human being in reasonable fear of
10 serious bodily injury;

11 “(ii) to cause evacuation of a building, place of assembly,
12 vehicle, or facility of public transportation; or

13 “(iii) to cause serious public inconvenience, disruption,
14 or alarm.

15 “(3) informs another person that any conduct prohibited, in
16 fact, by paragraphs (1) or (2) is going to occur, with knowledge
17 that such information is false.

18 “(b) DEFENSE PRECLUDED.—It is not a defense under subsection
19 (a) (1) or (2) that the defendant made the threat falsely or in a mis-
20 leading fashion, or intended the threat as a joke.

21 “(c) GRADING.—The offense defined:

22 “(1) in subsection (a) (1) is a Class D felony; and

23 “(2) in subsection (a) (2) is a Class E felony.

24 “(d) COMPOUND GRADING.—The offense is:

25 “(1) a Class A felony if any of the following additional
26 offenses is committed: murder or aggravated kidnapping; or

27 “(2) a Class B felony if any of the following additional offenses
28 is committed: maiming, aggravated arson, or aggravated mali-
29 cious mischief.

30 “(e) JURISDICTION.—Federal jurisdiction exists when the offense is
31 committed within the jurisdiction defined in section 1-1A4(64) (spe-
32 cial jurisdiction); section 1-1A4(35) (high public servant jurisdic-
33 tion); section 1-1A4(53) (piracy jurisdiction); section 1-1A4(69)
34 (mails jurisdiction); or section 1-1A4(12) (commerce jurisdiction).

35 **“Subchapter D.—Kidnapping and Related Offenses**

“Sec.

“2-7D1. Aggravated Kidnapping.

“2-7D2. Kidnapping.

“2-7D3. Unlawful Imprisonment.

“2-7D4. Skyjacking.

“2-7D5. Mutiny or Commandeering.

1 **“§ 2-7D1. Aggravated Kidnapping**

2 “(a) **OFFENSE.**—A person is guilty of aggravated kidnapping if he
3 restrains another human being, with intent to:

4 “(1) hold another human being for ransom or reward;

5 “(2) use another human being as a shield or hostage;

6 “(3) inflict bodily injury upon another human being or violate
7 or abuse another human being sexually;

8 “(4) interfere with the performance of any government func-
9 tion; or

10 “(5) facilitate the commission of conduct which constitutes,
11 in fact, another felony or flight from it.

12 “(b) **INCLUDED OFFENSES.**—Kidnapping and unlawful imprison-
13 ment are offenses included in aggravated kidnapping.

14 “(c) **GRADING.**—The offense is:

15 “(1) a Class A felony if such human being is not released alive
16 and in a safe place prior to trial;

17 “(2) a Class B felony where such human being is released alive
18 and in a safe place prior to trial, but has suffered serious bodily
19 injury; or

20 “(3) a Class C felony in all other cases.

21 “(d) **COMPOUND GRADING.**—The offense is:

22 “(1) a Class A felony if any of the following additional offenses
23 is committed: murder or rape; or

24 “(2) a Class B felony if any of the following additional offenses
25 is committed: maiming, aggravated arson, or aggravated mali-
26 cious mischief.

27 “(e) **JURISDICTION.**—Federal jurisdiction exists when the offense is
28 committed within the jurisdiction defined in section 1-1A4(64) (special
29 jurisdiction); section 1-1A4(35) (high public servant jurisdiction);
30 section 1-1A4(53) (piracy jurisdiction); section 1-1A4(69) (mails
31 jurisdiction); or section 1-1A4(12) (commerce jurisdiction).

32 **“§ 2-7D2. Kidnapping**

33 “(a) **OFFENSE.**—A person is guilty of kidnapping if he knowingly
34 restrains another human being:

35 “(1) under circumstances which, in fact, expose such other
36 human being to risk of serious bodily injury;

37 “(2) by secreting and holding him in a place where he is not
38 likely to be found;

39 “(3) by endangering or threatening to endanger the safety of
40 any human being; or

1 “(4) by holding him in a condition of involuntary servitude.

2 “(b) INCLUDED OFFENSE.—Unlawful imprisonment is an offense
3 included in kidnapping.

4 “(c) GRADING.—The offense is a Class C felony if such human being
5 is not released without suffering bodily injury. Otherwise it is a Class
6 D felony.

7 “(d) COMPOUND GRADING.—The offense is:

8 “(1) a Class A felony if any of the following additional offenses
9 is committed: murder or rape; or

10 “(2) a Class B felony if any of the following additional offenses
11 is committed: maiming, aggravated arson, or aggravated malicious
12 mischief.

13 “(e) JURISDICTION.—Federal jurisdiction exists when the offense is
14 committed within the jurisdiction defined in section 1-1A4(64) (spe-
15 cial jurisdiction); section 1-1A4(35) (high public servant jurisdic-
16 tion); section 1-1A4(53) (piracy jurisdiction); section 1-1A4(69)
17 (mails jurisdiction); or section 1-1A4(12) (commerce jurisdiction).
18 Federal jurisdiction exists over the offense defined in subsection (a)
19 (4) when the offense is committed.

20 **“§ 2-7D3. Unlawful Imprisonment**

21 “(a) OFFENSE.—A person is guilty of unlawful imprisonment if he
22 knowingly restrains another human being.

23 “(b) GRADING.—The offense is a Class E felony.

24 “(c) JURISDICTION.—Federal jurisdiction exists when the offense is
25 committed within the jurisdiction defined in section 1-1A4(64)
26 (special jurisdiction); section 1-1A4(35) (high public servant juris-
27 diction); section 1-1A4(53) (piracy jurisdiction); section 1-1A4(69)
28 (mails jurisdiction); or section 1-1A4(12) (commerce jurisdiction).

29 **“§ 2-7D4. Skyjacking**

30 “(a) OFFENSE.—A person is guilty of skyjacking if, without au-
31 thority and by force, threat of force, or deception, he seizes or exercises
32 control of an aircraft or spacecraft in flight or otherwise.

33 “(b) GRADING.—The offense is a Class A felony.

34 “(c) JURISDICTION.—Federal jurisdiction exists when the offense is
35 committed within the jurisdiction defined in section 1-1A4(64)
36 (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); or sec-
37 tion 1-1A4(12) (commerce jurisdiction).

38 **“§ 2-7D5. Mutiny or Commandeering**

39 “(a) OFFENSE.—A person is guilty of an offense if, without au-
40 thority and by force, threat of force, or deception, he seizes or exercises
41 command of a vessel.

1 “(b) **GRADING.**—The offense is a Class B felony if the defendant
2 was a member of the crew. Otherwise it is a Class C felony.

3 “(c) **JURISDICTION.**—Federal jurisdiction exists when the offense is
4 committed within the jurisdiction defined in section 1-1A4(64)
5 (special jurisdiction) or section 1-1A4(53) (piracy jurisdiction).

6 **“Subchapter E.—Sex Offenses**

“Sec.

“2-7E1. Rape

“2-7E2. Statutory Rape.

“2-7E3. Sexual Assault.

7 **“§ 2-7E1. Rape**

8 “(a) **OFFENSE.**—A person is guilty of rape if he engages in a sexual
9 act with another human being, not his spouse, and he compels such
10 human being to submit:

11 “(1) by force and against the will of such human being; or

12 “(2) by threat that imminent death, serious bodily injury,
13 or kidnapping will be inflicted on the other human being threat-
14 ened or on any other human being.

15 “(b) **INCLUDED OFFENSES.**—Statutory rape and sexual assault are
16 offenses included in rape.

17 “(c) **GRADING.**—The offense is a Class A felony if the other human
18 being suffers serious bodily injury as a result of the offense. Other-
19 wise it is a Class B felony.

20 “(d) **JURISDICTION.**—Federal jurisdiction exists when the offense is
21 committed within the jurisdiction defined in section 1-1A4(64)
22 (special jurisdiction); section 1-1A4(35) (high public servant juris-
23 diction); or section 1-1A4(53) (piracy jurisdiction).

24 **“§ 2-7E2. Statutory Rape**

25 “(a) **OFFENSE.**—A person is guilty of statutory rape if he engages
26 in a sexual act with another human being, not his spouse, and:

27 “(1) the other human being is less than 16 years old;

28 “(2) he has substantially impaired the other human being's
29 power to appraise or control his sex acts by administering or
30 employing drugs, intoxicants, hypnosis, or other similar means;

31 “(3) he compels or induces the other human being to engage in
32 such sexual act by any misrepresentation or threat;

33 “(4) the other human being suffers from mental illness or
34 defect and because of such mental illness or defect he has not
35 consented to such sexual act;

36 “(5) the other human being is unconscious or otherwise physi-
37 cally incapable of resisting and has not consented to such sexual
38 act;

1 “(6) the other human being is in official detention or in an insti-
2 tution and the person has supervisory or disciplinary authority
3 over such other human being; or

4 “(7) the other person is an unemancipated minor and the per-
5 son is a parent, guardian, or person responsible for the care and
6 supervision, in general or for a special purpose, of such other
7 human being.

8 “(b) **DEFENSE.**—It is a defense under subsection (a)(2) that the
9 other human being voluntarily consumes, allows, or consents to the
10 administration or employment of drugs, intoxicants, hypnosis, or other
11 similar means and is aware that under the effect of such means he will
12 probably engage in a sexual act.

13 “(c) **INCLUDED OFFENSE.**—Sexual assault is an offense included in
14 statutory rape.

15 “(d) **GRADING.**—The offense is a Class D felony, except that:

16 “(1) if the other human being is less than 13 years old, it is a
17 Class C felony; or

18 “(2) if the other human being is less than 10 years old, it is a
19 Class B felony.

20 “(e) **JURISDICTION.**—Federal jurisdiction exists when the offense is
21 committed within the jurisdiction defined in section 1-1A4(64) (special
22 jurisdiction); section 1-1A4(35) (high public servant jurisdiction);
23 or section 1-1A4(53) (piracy jurisdiction); or when the official deten-
24 tion is Federal or the defendant is a Federal public servant.

25 **“§ 2-7E3. Sexual Assault**

26 “(a) **OFFENSE.**—A person is guilty of sexual assault if he knowingly
27 subjects another human being, not his spouse, to any sexual contact,
28 and:

29 “(1) the other human being does not expressly or impliedly
30 acquiesce in such sexual contact;

31 “(2) the other human being is less than 13 years old;

32 “(3) the other human being suffers from mental illness or
33 defect and because of such mental illness or defect he has not
34 consented to such sexual contact;

35 “(4) the other human being is unconscious or otherwise physi-
36 cally incapable of resisting and has not consented to such sexual
37 contact;

38 “(5) the other human being is in official detention or in an insti-
39 tution and the person has supervisory or disciplinary authority
40 over such other human being; or

“(6) the other human being is an unemancipated minor and the person is a parent, guardian, or person responsible for the care and supervision, in general or for a special purpose, of such other person.

“(b) GRADING.—The offense defined in

“(1) subsection (a) (5) is a Class C felony; and

“(2) subsection (a) (2) is a Class D felony.

Otherwise, it is a Class E felony.

“(c) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(35) (high public servant jurisdiction); or section 1-1A4(53) (piracy jurisdiction).

“Subchapter F.—Civil Rights Offenses

“Sec.

“2-7F1. Deprivation of Civil Rights.

“2-7F2. Interference With Government Benefit or Program.

“2-7F3. Discrimination.

“2-7F4. Interference With Civil Rights Activities.

“2-7F5. Unlawful Acts Under Color of Law.

“2-7F6. Interference With Activities of Employees and Employers.

“§ 2-7F1. Deprivation of Civil Rights

“(a) OFFENSE.—A person is guilty of an offense if he intentionally :

“(1) injures, oppresses, threatens, or intimidates any other person in the free exercise or enjoyment of, or because of such person having exercised, any right or privilege secured to him by the constitution or laws of the United States;

“(2) goes on the property of another person or goes in disguise on the highway to prevent or hinder another person’s free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States; or

“(3) subjects, under color of law, any inhabitant of any state :

“(i) to the deprivation of any rights, privileges, or immunities secured or protected by the constitution or laws of the United States; or

“(ii) to different punishments, pains, or penalties on account of such inhabitant being an alien, or by reason of his race, color, sex, religion, or national origin.

“(b) GRADING.—The offense is a Class E felony.

“(c) COMPOUND GRADING.—The offense is :

“(1) a Class A felony if any of the following additional offenses

1 is committed: murder or aggravated kidnapping; or

2 “(2) a Class B felony if any of the following additional offenses
3 is committed: maiming, aggravated arson or aggravated malicious
4 mischief.

5 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
6 committed.

7 **“§ 2-7F2. Interference With Government Benefit or Program**

8 “(a) OFFENSE.—A person is guilty of an offense if he intentionally:

9 “(1) withholds from or deprives another person or threatens
10 to withhold from or deprive another person of the benefit of any
11 government program or government-supported program, or a gov-
12 ernment contract, to interfere with, restrain, or coerce any person
13 in the exercise of his right to vote for any candidate or issue at any
14 election, or in the exercise of any other political right; or

15 “(2) injures, intimidates, or interferes with another person, by
16 force or threat of force, because such person is or has been:

17 “(i) participating in or enjoying the benefits of any pro-
18 gram, facility, or activity provided or administered by the
19 government, or receiving government financial assistance,
20 including:

21 “(A) serving as a grand or petit juror in any court or
22 attending court in connection with such possible service;

23 “(B) qualifying for or operating in a contractual rela-
24 tionship with the government; or

25 “(C) qualifying for or enjoying the benefits of a gov-
26 ernment loan or government guarantee or insurance of
27 loan; or

28 “(ii) applying for or enjoying employment, or any prereq-
29 uisite of employment, by a government agency.

30 “(b) GRADING.—The offense is a Class E felony.

31 “(c) COMPOUND GRADING.—The offense is:

32 “(1) a Class A felony if any of the following additional offenses
33 is committed: murder or aggravated kidnapping; or

34 “(2) a Class B felony if any of the following additional offenses
35 is committed: maiming, aggravated arson, or aggravated malicious
36 mischief.

37 “(d) JURISDICTION.—Federal jurisdiction exists when the govern-
38 ment is Federal.

1 **“§ 2-7F3. Discrimination**

2 “(a) OFFENSE.—A person is guilty of an offense if he intentionally
3 injuries, intimidates, or interferes with another person, by force or
4 threat of force, because of his race, color, sex, religion, or national ori-
5 gin and because he is or has been, or to intimidate him or any other
6 person from :

7 “(1) voting for any candidate or issue or qualifying to vote,
8 qualifying or campaigning as a candidate for elective office, or
9 qualifying or acting as a poll watcher or other election official,
10 in any primary, special, or general election ;

11 “(2) enrolling in or attending any public school or college ;

12 “(3) participating in or enjoying the benefits of any program,
13 facility, or activity provided or administered by any state or local
14 government, including :

15 “(i) serving as a grand or petit juror in any court or attend-
16 ing court in connection with such possible service ;

17 “(ii) qualifying for or operating in a contractual relation-
18 ship with the government ; or

19 “(iii) qualifying for or enjoying the benefits of a govern-
20 ment loan or government guarantee or insurance of a loan ;

21 “(4) enjoying the goods, services, or accommodations of any
22 establishment which provides lodging to transient guests, or of
23 any facility which serves the public and is engaged in selling
24 food, beverages, or gasoline, or of any place of exhibition or
25 entertainment which serves the public, or of any other establish-
26 ment which serves the public and :

27 “(i) which is located within the premises of any such
28 establishment, and

29 “(ii) which holds itself out as serving patrons of such
30 establishment.

31 This paragraph shall not apply if such establishment is located
32 within a building which contains not more than five rooms for
33 rent or hire and which is actually occupied by the proprietor as
34 his residence :

35 “(5) applying for or enjoying employment, or any prerequisite
36 of employment by any employer, or joining or using the services
37 or advantages of any labor organization, hiring hall, or employ-
38 ment agency ;

39 “(6) selling, purchasing, renting, financing, occupying, or
40 contracting or negotiating for the sale, purchase, rental, financ-

ing, or occupation of any dwelling, or applying for or participating in any service, organization or facility relating to the business of such selling or otherwise dealing in dwellings; or

“(7) traveling among the states or in interstate or foreign commerce, or using any facility which affects interstate or foreign travel, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air.

“(b) GRADING.—The offense is a Class E felony.

“(c) COMPOUND GRADING.—The offense is:

“(1) a Class A felony if any of the following additional offenses is committed: murder or aggravated kidnapping; or

“(2) a Class B felony if any of the following additional offenses is committed: maiming, aggravated arson, or aggravated malicious mischief.

“(d) JURISDICTION.—Federal jurisdiction exists when the offense is committed.

“§ 2-7F4. Interference With Civil Rights Activities

“(a) OFFENSE.—A person is guilty of an offense if he intentionally injures, intimidates, or interferes with another person, by force or threat of force, because such person is or has been, or to intimidate him or any other person from:

“(1) affording, in official or private capacity, another person or class of persons opportunity or protection to participate in any benefit or program, in fact, described in section 2-7F2, or to participate without discrimination on account of race, color, sex, religion, or national origin in any benefit or activity, in fact, described in section 2-7F3;

“(2) aiding or encouraging another person to participate in any benefit or program, in fact, described in section 2-7B2, or to participate without discrimination on account of race, color, sex, religion, or national origin in any benefit or activity, in fact, described in section 2-7B3; or

“(3) in fact lawfully participating in speech or peaceful assembly opposing any denial of opportunity to participate in any benefit or program, in fact, described in section 2-7B2, or to participate without discrimination on account of race, color, sex, religion, or national origin in any benefit or activity, in fact, described in section 2-7B3.

“(b) GRADING.—The offense is a Class E felony.

“(c) COMPOUND GRADING.—The offense is:

1 “(1) a Class A felony if any of the following additional offenses
2 is committed: murder or aggravated kidnapping; or

3 “(2) a Class B felony if any of the following additional offenses
4 is committed: maiming, aggravated arson, or aggravated mali-
5 cious mischief.

6 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
7 committed.

8 **“§ 2-7F5. Unlawful Acts Under Color of Law**

9 “(a) OFFENSE.—A Federal public servant acting under color of
10 law or a state public servant acting under color of law, or a person
11 acting under color of Federal or state law, is guilty of an offense if he
12 intentionally:

13 “(1) subjects another person to violence or detention which is
14 unlawful;

15 “(2) exceeds his authority in executing an order or other proc-
16 ess for arrest, search and seizure, or the production of evidence;

17 “(3) extorts a confession or plea of guilty from another person
18 by violence, threats of violence, or intimidation;

19 “(4) denies another person his right to counsel during the
20 period between detention and appearance in court; or

21 “(5) fabricates, falsifies, or suppresses evidence to secure a
22 conviction or interfere with the defense of another person.

23 “(b) GRADING.—The offense is a Class E felony.

24 “(c) COMPOUND GRADING.—The offense is:

25 “(1) a Class A felony if any of the following additional offenses
26 is committed: murder or aggravated kidnapping;

27 “(2) a Class B felony if any of the following additional offenses
28 is committed: maiming, aggravated arson, or aggravated malici-
29 ous mischief.

30 “(d) JURISDICTION.—Federal jurisdiction exists when the offense
31 is committed.

32 **“§ 2-7F6. Interference With Activities of Employees and Em-**
33 **ployers**

34 “(a) OFFENSE.—A person is guilty of an offense if he intentionally
35 injures, intimidates, or interferes with another person, by force or
36 threat of force, and such other person is:

37 “(1) an employee engaged in peaceful picketing during any
38 labor controversy affecting wages, hours, or conditions of labor;

1 “(2) an employee engaged in activities relating to self-organiza-
2 tion or collective bargaining; or

3 “(3) an employer engaged in maintaining open access to a plant
4 or other business establishment.

5 “(b) GRADING.—The offense is a Class E felony.

6 “(c) COMPOUND GRADING.—The offense is:

7 “(1) a Class A felony if any of the following additional offenses
8 is committed: murder or aggravated kidnapping; or

9 “(2) a Class B felony if any of the following additional offenses
10 is committed: maiming, aggravated arson, or aggravated mali-
11 cious mischief.

12 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
13 committed within the jurisdiction defined in section 1-1A4(64)
14 (special jurisdiction) or section 1-1A(3) (affects commerce juris-
15 diction).

16 **“Subchapter G.—Interference With Privacy Offenses**

“Sec.

“2-7G1. Eavesdropping.

“2-7G2. Trafficking in Eavesdropping Device.

“2-7G3. Interception of Correspondence.

17 **“§ 2-7G1. Eavesdropping**

18 “(a) OFFENSE.—A person is guilty of eavesdropping if he
19 intentionally:

20 “(1) intercepts any private communication by use of an eaves-
21 dropping device; or

22 “(2) discloses to any other person or uses the contents of any
23 private communication, knowing that such contents were obtained
24 by conduct constituting, in fact, a violation of paragraph (1).

25 “(b) DEFENSE.—It is a defense that the defendant was a party to the
26 communication, or that one of the parties to the communication had
27 given prior consent to such interception, and such communication was
28 not intercepted with intent to facilitate the engaging in of conduct
29 constituting, in fact, a crime or which is otherwise tortious.

30 “(c) EXCLUSION.—It is not an offense for an employee of a
31 communications common carrier, whose facilities are used in the
32 transmission of a communication, to intercept, disclose, or use
33 such communication in the normal course of his employment while en-
34 gaged in any activity which is a necessary incident to the rendering
35 of his service or to the protection of the rights or property of the
36 carrier of such communication. Service observing or random monitor-
37 ing are not necessarily incident to such service or protection except
38 when used for mechanical or service quality control checks.

1 “(d) GRADING.—The offense is a Class D felony.

2 “(e) DEFINITIONS.—As used in this section :

3 “(1) ‘communications common carrier’ has the meaning pre-
4 scribed for the term ‘common carrier’ in section 153(h), title 47,
5 United States Code ;

6 “(2) ‘contents’, when used with respect to any oral communica-
7 tion, includes any information, obtained from the communication
8 itself, concerning the identity of the parties to such communica-
9 tion or the existence or meaning of such communication ;

10 “(3) ‘intercept’ means the aural acquisition of the contents of
11 any private communication ;

12 “(4) ‘eavesdropping device’ means an electronic, mechanical,
13 or other device or apparatus which can be used to intercept a
14 private communication ; and

15 “(5) ‘private communication’ means an oral communication ut-
16 tered by a person who exhibits an expectation that such commun-
17 ication is not subject to overhearing, under circumstances
18 justifying such expectation.

19 “(f) JURISDICTION.—Federal jurisdiction exists when the offense is
20 committed anywhere under the powers of Congress to regulate com-
21 merce and under the findings of Congress expressed in section 801
22 of Public Law 90-351.

23 **“§ 2-7G2. Trafficking in Eavesdropping Device**

24 “(a) OFFENSE.—A person is guilty of an offense if he :

25 “(1) traffics in an eavesdropping device, knowing that the
26 design of such device renders it primarily useful for surreptitious
27 interception of private communications ; or

28 “(2) places in a newspaper, magazine, handbill, or other publica-
29 tion an advertisement of an eavesdropping device, knowing that :

30 “(i) the design of such device renders it primarily useful
31 for surreptitious interception of private communications, or

32 “(ii) such advertisement promotes the use of such device for
33 surreptitious interception of private communications.

34 “(b) DEFENSES.—It is a defense that the defendant was :

35 “(1) an employee of, or a person under contract with, a com-
36 munications common carrier, acting within the normal course of
37 the business of such communications common carrier ; or

38 “(2) a person acting within the scope of a government contract
39 made by a person acting in the course of his official duties.

1 “(c) GRADING.—The offense defined in :

2 “(1) subsection (a) (1) is a Class C felony ; and

3 “(2) subsection (a) (2) is a Class E felony.

4 “(d) DEFINITIONS.—As used in this section :

5 “(1) ‘communications common carrier’ has the meaning pre-
6 scribed for the term ‘common carrier’ in section 153(h), title 47,
7 United States Code ;

8 “(2) ‘eavesdropping device’ means an electronic, mechanical,
9 or other device or apparatus which can be used to intercept a pri-
10 vate communication ;

11 “(3) ‘intercept’ means the aural acquisition of the contents of
12 any private communication ; and

13 “(4) ‘private communication’ means an oral communication
14 uttered by a person who exhibits an expectation that such com-
15 munication is not subject to overhearing, under circumstances
16 justifying such expectation.

17 “(e) JURISDICTION.—Federal jurisdiction exists when the offense is
18 committed anywhere under the powers of Congress to regulate
19 commerce and under the findings of Congress expressed in section
20 801 of Public Law 90-351.

21 **“§ 2-7G3. Interception of Correspondence**

22 “(a) OFFENSE.—A person is guilty of an offense if :

23 “(1) with intent to prevent its delivery, he damages or destroys
24 private correspondence ;

25 “(2) with intent to acquire its contents, he opens or reads pri-
26 vate correspondence ; or

27 “(3) he discloses to any other person or uses the contents of any
28 private correspondence, knowing that such contents were obtained
29 by conduct which constituted, in fact, a violation of paragraph (2).

30 “(b) DEFENSE.—It is a defense that the defendant had the consent
31 of a party to the correspondence or one of the parties to the corre-
32 spondence had given prior consent to such damage, destruction, open-
33 ing, reading, disclosure, or use.

34 “(c) GRADING.—The offense is a Class D felony.

35 “(d) DEFINITION.—As used in this section :

36 “(i) ‘contents’, when used with respect to any written com-
37 munication, includes any information obtained from the
38 communication itself concerning the identity of the parties
39 to such communication or the existence or meaning of such
40 communication ; and

“(ii) ‘private correspondence’ means a written communication uttered by a person who exhibits an expectation that such communication is not subject to reading, under circumstances justifying such expectation.

“(e) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(69) (mails jurisdiction); section 1-1A4(12) (commerce jurisdiction); or section 1-1A4(3) (affects interstate commerce jurisdiction).

“Chapter 8.—OFFENSES AGAINST PROPERTY

“Subchapter

“A. General Provisions.

“B. Arson and Other Property Destruction.

“C. Burglary and Other Criminal Intrusion.

“D. Robbery, Theft, and Related Offenses.

“E. Forgery and Related Offenses.

“F. Economic Offenses.

“Subchapter A.—General Provisions

“Sec.

“2-8A1. Definition of Terms.

“2-8A2. Valuation.

“§ 2-8A1. Definition of Terms

“As used in this chapter, unless it is otherwise provided or a different meaning plainly is required:

“(1) ‘credit card’ means a card, plate, or any other identifying symbol or instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer;

“(2) ‘debtor’ means any person to whom an extension of credit is made, or who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same;

“(3) a person ‘enters or remains unlawfully’ in or on property of another when, at the time of such entry or remaining, the property is not open to the public or is open upon express or implied condition which which the person does not comply, and the person is not otherwise, in fact, authorized to enter or remain;

“(4) ‘falsely makes’ means to make:

“(i) a writing which purports to be made by the government or another person, but which is not because the apparent maker is fictitious or because the writing is made without authority,

1 “(ii) a change in a writing, without authority, such that the
2 writing appears to have been made by, or fully authorized by,
3 its apparent maker; or

4 “(iii) an addition to or an insertation in a writing, without
5 authority, such that the writing appears to have been made
6 by, or fully authorized by, its apparent maker;

7 “(5) ‘fiduciary’ means a trustee, guardian, executor, administra-
8 tor, receiver, or any other person acting in a fiduciary capacity, or
9 any person carrying on fiduciary functions on behalf of a corpora-
10 tion or other organization which is a fiduciary;

11 “(6) ‘obtain’ means to take, withhold, convert, or otherwise to
12 bring about a transfer or purported transfer of property or to
13 secure performance of services, including, as to property, to:

14 “(i) exercise control over property of another or aid a
15 third person to exercise such control permanently or for so
16 extended a period or under such circumstances as to acquire
17 the significant portion of its economic value or benefit.

18 “(ii) dispose of the property of another for the benefit of
19 oneself or a third person,

20 “(iii) lease, pledge, pawn, or encumber property of an-
21 other, without authority, in such manner as to create a sub-
22 stantial risk that the owner will not be able to recover it or
23 will suffer loss,

24 “(iv) withhold property of another permanently or for so
25 extended a period as to appropriate a significant portion of its
26 economic value,

27 “(v) withhold property of another with a purpose to restore
28 only upon payment of reward or other compensation, or

29 “(vi) abandon the property under circumstances amount-
30 ing to a reckless exposure to loss;

31 “(7) ‘pass’ means to issue, authenticate, transfer, publish, sell,
32 transmit, present, use, or otherwise give currency to;

33 “(8) ‘property’ means anything of value, tangible or intangible
34 and includes land and things growing on, affixed to, or found
35 on land, money, commercial instruments, obligations, securities,
36 credit cards, wills, contract rights, choses in action or other
37 interests in or claims to labor, services, writings embodying such
38 contract rights, choses in action, interests or claims, captured or
39 domestic animals, birds or fishes, trade secrets, commodities of a
40 public utility nature such as power, gas, electricity, steam, or
41 water;

1 “(9) ‘property of another’ means property in which any person
2 other than the person has an interest, which interest the person is
3 not privileged to infringe, whether or not he also has an interest
4 in the property and whether or not the other person might be
5 precluded from civil recovery. Property in possession of the person
6 shall not be deemed property of another who has only a security
7 interest in such property, even if legal title is in the other person
8 under a conditional sales contract or other security agreement;

9 “(10) ‘security’ includes any obligation or other security of the
10 United States, any note, stock certificate, bond, debenture, check,
11 draft, warrant, traveler’s check, letter of credit, warehouse receipt,
12 negotiable bill of lading, evidence of indebtedness, certificate of
13 interest or participation in any profit-sharing agreement, col-
14 lateral-trust certificate, reorganization certificate or subscription,
15 transferable share, investment contract, voting-trust certificate,
16 certificate of interest in tangible or intangible property, instru-
17 ment or document or writing evidencing ownership of goods,
18 wares, and merchandise, or transferring or assigning any right,
19 title, or interest in goods, wares, and merchandise, uncanceled
20 stamp issued by a foreign government whether or not demonetized,
21 or, in general, any instrument or other writing commonly known
22 as a ‘security,’ or any certificate of interest or participation in,
23 temporary or interim certificate for, receipt for, warrant or right
24 to subscribe to or purchase any of the foregoing;

25 “(11) ‘services’ include a benefit resulting from the labor, skill,
26 or time of another person or from the use of property, including
27 labor, professional service, transportation, telephone, mail, or
28 other public services, gas, electricity, or other public utility serv-
29 ices, accommodations in hotels, restaurants, or elsewhere, admis-
30 sion to exhibitions, and use of vehicles or other property; and

31 “(12) ‘writing’ includes:

32 “(i) any paper, document, or other instrument containing
33 written or printed matter or its equivalent, including money,
34 a money order, bond, public record, affidavit, certificate, pass-
35 port, visa, contract, security, or obligation,

36 “(ii) any coin or any gold or silver bar coined or stamped
37 at a mint or assay office of the United States or any signature,
38 certification, credit card, token, stamp, seal, badge, decoration,
39 medal, trademark, or other symbol or evidence of value, right,
40 privilege, or identification which is capable of being used to

1 the advantage or disadvantage of the government or any
2 person, or

3 “(iii) any tax stamp, tax token, tax meter imprint, or any
4 other form of evidence of an obligation running to a state,
5 or evidence of the discharge of such obligation.

6 **“§ 2-8A2. Valuation**

7 “For the purposes of this chapter, whenever the value of property
8 or services is determinative of the grading of an offense or otherwise
9 relevant, the following rules shall apply :

10 “(a) Except as otherwise provided, value means the market value
11 of the property or services at the time and place of the offense, or
12 if market value cannot be satisfactorily ascertained, the cost of replace-
13 ment of the property or services within a reasonable time after the
14 offense;

15 “(b) The value of a writing which does not have a readily ascertain-
16 able market value is the amount due or collectible on such writing. In
17 the case of a writing which creates, releases, discharges, or otherwise
18 affects any valuable legal right, privilege, or obligation, the value is
19 the greatest amount of economic loss which the owner of such writing
20 might reasonably suffer by virtue of the loss of the writing;

21 “(c) The value of a trade secret which does not have a readily ascer-
22 tainable market value is any reasonable value representing the damage
23 to the owner suffered by losing an advantage over those who do not
24 know of or use the trade secret;

25 “(d) The value of a slug is the value of the coin, bit, or token for
26 which it is capable of being substituted;

27 “(e) Amounts of value involved in conduct committed under one
28 scheme or course of conduct, whether involving the same person or
29 several persons, may be aggregated in determining the grade of the
30 offense.

31 **“Subchapter B.—Arson and Other Property Destruction**

“Sec.

“2-8B1. Aggravated Arson.

“2-8B2. Arson.

“2-8B3. Release of Destructive Forces.

“2-8B4. Failure to Control or Report Dangerous Fire.

“2-8B5. Aggravated Malicious Mischief.

“2-8B6. Malicious Mischief.

32 **“§ 2-8B1. Aggravated Arson**

33 “(a) OFFENSE.—A person is guilty of aggravated arson if he inten-
34 tionally starts, causes, or maintains a fire or explosion that damages any
35 structure which is property of another in reckless disregard of the risk
36 that at the time of such conduct a person may be in such structure.

1 “(b) **DEFENSE PRECLUDED.**—It is not a defense that no person is pres-
2 ent in the structure.

3 “(c) **INCLUDED OFFENSES.**—Arson, release of destructive forces, and
4 failure to control or report dangerous fire are offenses included in
5 aggravated arson,

6 “(d) **GRADING.**—The offense is a Class B felony if the fire or explo-
7 sion causes serious bodily injury to any person present in the struc-
8 ture. Otherwise it is a Class C felony.

9 “(d) **COMPOUND GRADING.**—The offense is a Class A felony if the
10 following additional offense is committed : murder.

11 “(e) **JURISDICTION.**—Federal jurisdiction exists when the offense is
12 committed within the jurisdiction defined in section 1-1A4(64) (special
13 jurisdiction) ; section 1-1A4(53) (piracy jurisdiction) ; section 1-1A4
14 (12) (commerce jurisdiction) ; section 1-1A4(24) (Federal property
15 jurisdiction) ; or section 1-1A4(69) (mails jurisdiction). If the offense
16 is committed by means of an explosive or a destructive device, Federal
17 jurisdiction also exists when the offense is committed within the
18 jurisdiction defined in section 1-1A4(3) (affects commerce jurisdic-
19 tion) or section 1-1A4(58) (receiving Federal financial assistance
20 jurisdiction).

21 **“§ 2-8B2. Arson**

22 “(a) **OFFENSE.**—A person is guilty of arson if he starts, causes, or
23 maintains a fire or explosion on his own property or property of
24 another :

25 “(1) with intent to enable any person to collect insurance pro-
26 ceeds for loss caused by the fire or explosion ; or

27 “(2) in reckless disregard of the risk that his conduct will
28 damage or destroy property of another.

29 “(b) **INCLUDED OFFENSE.**—Failure to control or report dangerous
30 fire is an offense included in arson.

31 “(c) **GRADING.**—The offense defined in :

32 “(1) subsection (a) (1) is a Class C felony ; and

33 “(2) subsection (a) (2) is a Class D felony.

34 “(d) **COMPOUND GRADING.**—The offense is :

35 “(1) a Class A felony if the following additional offense is
36 committed : murder ; or

37 “(2) a Class B felony if the following additional offense is com-
38 mitted : maiming.

39 “(e) **JURISDICTION.**—Federal jurisdiction exists when the offense is
40 committed within the jurisdiction defined in section 1-1A4(64) (spe-

cial jurisdiction) ; section 1-1A4(53) (piracy jurisdiction) ; section 1-1A4(12) (commerce jurisdiction) ; section 1-1A4(24) (Federal property jurisdiction) ; or section 1-1A4(69) (mails jurisdiction). If the offense is committed by means of an explosive or a destructive device. Federal jurisdiction also exists when the offense is committed within the jurisdiction defined in section 1-1A4(3) (affects commerce jurisdiction) or section 1-1A4(58) (receiving Federal financial assistance jurisdiction).

§ 2-8B3. Release of Destructive Forces

“(a) OFFENSE.—A person is guilty of an offense if he :

“(1) intentionally causes a catastrophe by explosion, fire, flood, avalanche, collapse of a structure, release of poison, radioactive material, bacteria, virus, or other dangerous and difficult-to-confine force or substance ;

“(2) recklessly causes a catastrophe by explosion, fire, flood, avalanche, collapse of a structure, release of poison, radioactive material, bacteria, virus, or other dangerous and difficult-to-confine force or substance ; or

“(3) through criminal negligence creates a risk of catastrophe or fails to take reasonable measures to prevent a catastrophe, in fact, listed in paragraph (1) although no fire, explosion, or other catastrophe results.

“(b) INCLUDED OFFENSE.—Aggravated malicious mischief may be an offense included in release of destructive forces.

“(c) GRADING.—The offense defined in :

“(1) subsection (a) (1) is a Class B felony ;

“(2) subsection (a) (2) is a Class C felony ; and

“(3) subsection (a) (3) is a Class D felony.

“(d) DEFINITION.—As used in this section, ‘catastrophe’ means serious bodily injury to ten or more people, substantial damage to ten or more separate occupied structures, one structure occupied in ten or more separate units, or property loss in excess of \$500,000.

“(e) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction) ; section 1-1A4(53) (piracy jurisdiction) ; section 1-1A4(12) (commerce jurisdiction) ; section 1-1A4(24) (Federal property jurisdiction) ; or section 1-1A4(69) (mails jurisdiction). If the offense is committed by means of an explosive or a destructive device, Federal jurisdiction also exists when the offense is committed within the jurisdiction defined in section 1-1A4(3) (affects commerce

1 jurisdiction) or section 1-1A4(58) (receiving Federal assistance
2 jurisdiction).

3 **“§ 2-8B4. Failure to Control or Report Dangerous Fire**

4 “(a) OFFENSE.—A person is guilty of an offense if he:

5 “(1) starts, causes, or maintains a fire or explosion and know-
6 ing that its spread would endanger human life or property of
7 another, fails to take reasonable measures to put out or control
8 the fire or to give a prompt fire alarm;

9 “(2) knowing that a fire is endangering a substantial amount
10 of property of another, as to which he has an official, contractual,
11 or other legal duty, fails to take reasonable measures to put out or
12 control the fire or to give a prompt fire alarm; or

13 “(3) knowing that a fire is endangering human life, fails to
14 take reasonable measures to save lives by notifying the persons
15 endangered or by putting out or controlling the fire or by giving
16 a prompt fire alarm.

17 “(b) GRADING.—The offense is a Class E felony.

18 “(c) COMPOUND GRADING.—The offense is:

19 “(1) a Class A felony if the following additional offense is
20 committed: murder; or

21 “(2) a Class B felony if the following additional offense is
22 committed: maiming.

23 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
24 committed within the jurisdiction defined in section 1-1A4(64)
25 (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); sec-
26 tion 1-1A4(12) (commerce jurisdiction); section 1-1A4(24) (Federal
27 property jurisdiction); or section 1-1A4(69) (mails jurisdiction). If
28 the offense is committed by means of an explosive or a destructive
29 device, Federal jurisdiction also exists when the offense is committed
30 within the jurisdiction defined in section 1-1A4(3) (affects commerce
31 jurisdiction) or section 1-1A4(58) (receiving Federal financial assist-
32 ance jurisdiction).

33 **“§ 2-8B5. Aggravated Malicious Mischief**

34 “(a) OFFENSE.—A person is guilty of aggravated malicious mischief
35 if he knowingly:

36 “(1) damages or destroys property of another in an amount
37 exceeding, in fact, \$1,000 in value, having no reasonable ground
38 to believe that he has a right to do so;

39 “(2) damages or destroys property in an amount exceeding, in
40 fact, \$1,000 in value, with intent to enable any person to collect
41 insurance proceeds for loss caused;

1 “(3) damages, destroys, or tampers with property of a public
2 safety agency or supplier of gas, electric, steam, water, transpor-
3 tation, sanitation, or communication services to the public, having
4 no reasonable ground to believe that he has a right to do so, and
5 by such conduct causes a substantial interruption or impairment
6 of service rendered to the public; or

7 “(4) damages, destroys, or tampers with property of another
8 and by such conduct recklessly endangers human life.

9 “(b) INCLUDED OFFENSE.—Malicious mischief is an offense included
10 in aggravated malicious mischief.

11 “(c) GRADING.—The offense is a Class B felony if the amount of
12 the damage or destruction or the value of the service lost through
13 interruption or impairment exceeds \$50,000. Otherwise it is a Class C
14 felony.

15 “(d) COMPOUND GRADING.—The offense is:

16 “(1) a Class A felony if the following additional offense is
17 committed: murder; or

18 “(2) a Class B felony if the following additional offense is
19 committed: maiming.

20 “(e) JURISDICTION.—Federal jurisdiction exists when the offense
21 is committed within the jurisdiction defined in section 1-1A4(64)
22 (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); sec-
23 tion 1-1A4(12) (commerce jurisdiction); section 1-1A4(24) (Federal
24 property jurisdiction); or section 1-1A4(69) (mails jurisdiction). If
25 the offense is committed by means of an explosive or a destructive de-
26 vice, Federal jurisdiction also exists when the offense is committed
27 within the jurisdiction defined in section 1-1A4(3) (affects commerce
28 jurisdiction) or section 1-1A4(58) (receiving Federal financial assist-
29 ance jurisdiction).

30 **“§2-8B6. Malicious Mischief**

31 “(a) OFFENSE.—A person is guilty of malicious mischief if he:

32 “(1) recklessly damages or destroys property of another, hav-
33 ing no reasonable ground to believe that he has a right to do so;

34 “(2) knowingly damages or destroys property in an amount
35 exceeding, in fact, \$100 in value, with intent to enable any person
36 to collect insurance proceeds for loss caused;

37 “(3) knowingly damages, destroys, or tampers with property
38 of a public safety agency or supplier of gas, electric, steam, water,
39 transportation, sanitation, or communication services to the
40 public, having no reasonable ground to believe that he has a

right to do so, and by such conduct recklessly creates a risk of interruption or impairment of service rendered to the public; or

“(4) through criminal negligence damages property of another by explosion, fire, flood, avalanche, collapse of a structure, release of poison, radioactive material, bacteria, virus or other dangerous and difficult-to-confine force or substance.

“(b) GRADING.—The offense is a Class D felony if the amount of the damage or destruction under subsection (a) (1) exceeds \$100 or if the person violates subsection (a) (2) or (a) (3). Otherwise it is a Class E felony.

“(c) COMPOUND GRADING.—The offense is:

“(1) a Class A felony if the following additional offense is committed: murder; or

“(2) a Class B felony if the following additional offense is committed: maiming.

“(d) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); section 1-1A4(12) (commerce jurisdiction); section 1-1A4(24) (Federal property jurisdiction); or section 1-1A4(69) (mails jurisdiction). If the offense is committed by means of an explosive or a destructive device, Federal jurisdiction also exists when the offense is committed within the jurisdiction defined in section 1-1A4(3) (affects commerce jurisdiction) or section 1-1A4(58) (receiving Federal financial assistance jurisdiction).

“Subchapter C.—Burglary and Other Criminal Intrusion

“Sec.

“2-8C1. Armed Burglary.

“2-8C2. Burglary.

“2-8C3. Possession of Burglar's Tools.

“2-8C4. Aggravated Criminal Trespass.

“2-8C5. Criminal Trespass.

“§ 2-8C1. Armed Burglary

“(a) OFFENSE.—A person is guilty of armed burglary if, with intent to engage in conduct which, in fact, constitutes an offense, he enters or remains unlawfully in a structure which is the property of another, and he or an accomplice is armed with a dangerous weapon.

“(b) INCLUDED OFFENSE.—Burglary and criminal trespass are offenses included in armed burglary.

“(c) GRADING.—The offense is a Class C felony.

“(d) COMPOUND GRADING.—The offense is:

“(1) a Class A felony if any of the following additional offenses is committed: murder, rape, or aggravated kidnapping; or

1 “(2) a Class B felony if any of the following additional of-
2 fenses is committed: maiming, aggravated arson, or aggravated
3 malicious mischief.

4 “(e) JURISDICTION.—Federal jurisdiction exists when the offense
5 is committed within the jurisdiction defined in section 1-1A4(64)
6 (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); sec-
7 tion 1-14A(24) (Federal property jurisdiction); or section 1-1A4(28)
8 (financial institution jurisdiction).

9 **“§ 2-8C2. Burglary**

10 “(a) OFFENSE.—A person is guilty of burglary if, with intent to
11 engage in conduct which, in fact, constitutes an offense, he enters or
12 remains unlawfully in a structure which is the property of another.

13 “(b) INCLUDED OFFENSE.—Criminal trespass is an offense included
14 in burglary.

15 “(c) GRADING.—The offense is a Class D felony.

16 “(d) COMPOUND GRADING.—The offense is:

17 “(1) a Class A felony if any of the following additional of-
18 fenses is committed: murder, rape, or aggravated kidnapping; or

19 “(2) a Class B felony if any of the following additional of-
20 fenses is committed: maiming, aggravated arson, or aggravated
21 malicious mischief.

22 “(e) JURISDICTION.—Federal jurisdiction exists when the offense
23 is committed within the jurisdiction defined in section 1-1A4(64)
24 (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); sec-
25 tion 1-1A4(24) (Federal property jurisdiction); or section 1-1A4(28)
26 (financial institution jurisdiction).

27 **“§ 2-8C3. Possession of Burglar's Tools**

28 “(a) OFFENSE.—A person is guilty of possession of burglar's tools
29 if he:

30 “(1) possesses any explosive, tool, instrument, or other article
31 adapted, designed, or commonly used for committing or facili-
32 tating engaging in conduct consisting, in fact, an offense involving
33 forcible entry into a structure or theft involving a physical taking;
34 and

35 “(2) intends to use the thing possessed, or knows that some other
36 person intends to use the thing possessed to engage in such conduct.

37 “(b) PRESUMPTION.—Proof that such possession of the explosive,
38 tool, instrument or other article was not reasonably related to any of
39 the defendant's, in fact, lawful activities, interests, or business gives
40 rise to a presumption of an intent to use the thing possessed to engage
41 in such conduct.

1 “(c) **GRADING.**—The offense is a Class E felony.

2 “(d) **JURISDICTION.**—Federal jurisdiction exists when the offense is
3 committed within the jurisdiction defined in section 1-1A4(64) (spe-
4 cial jurisdiction); section 1-1A4(53) (piracy jurisdiction); section
5 1-1A4(24) (Federal property jurisdiction); or section 1-1A4(28) (fi-
6 nancial institution jurisdiction).

7 **“§ 2-8C4. Aggravated Criminal Trespass**

8 “(a) **OFFENSE.**—A person is guilty of aggravated criminal tres-
9 pass if:

10 “(1) he enters or remains unlawfully in a structure which is
11 property of another, after an order to leave or not to enter com-
12 municated to him by one who is, in fact, the owner or an authorized
13 agent of the owner; and

14 “(2) by force or threat of force, he or an accomplice prevents
15 or hinders any person who is, in fact, authorized to do so from
16 leaving or entering upon or remaining in or on such property.

17 “(b) **INCLUDED OFFENSE.**—Criminal trespass is an offense included
18 in aggravated criminal trespass.

19 “(c) **GRADING.**—The offense is a Class E felony.

20 “(d) **COMPOUND GRADING.**—The offense is:

21 “(1) a Class A felony if any of the following additional of-
22 fenses is committed: murder, rape, or aggravated kidnapping; or

23 “(2) a Class B felony if any of the following additional offenses
24 is committed: maiming, aggravated arson, or aggravated mali-
25 cious mischief.

26 “(e) **JURISDICTION.**—Federal jurisdiction exists when the offense is
27 committed within the jurisdiction defined in section 1-1A4(64) (spe-
28 cial jurisdiction); section 1-1A4(53) (piracy jurisdiction); section
29 1-1A4(24) (Federal property jurisdiction); or section 1-1A4(28)
30 (financial institution jurisdiction).

31 **“§ 2-8C5. Criminal Trespass**

32 “(a) **OFFENSE.**—A person is guilty of criminal trespass if he:

33 “(1) knowingly enters or remains unlawfully in or on property
34 of another; or

35 “(2) enters or remains unlawfully in or on property of another
36 after an order to leave or not to enter communicated to him by
37 one who is, in fact, the owner or an authorized agent of the
38 owner,

39 “(b) **GRADING.**—The offense is a misdemeanor.

1 “(c) **COMPOUND GRADING.**—The offense is:

2 “(1) a Class A felony if any of the following additional offenses
3 is committed: murder, rape, or aggravated kidnapping; or

4 “(2) a Class B felony if any of the following additional offenses
5 is committed: maiming, aggravated arson, or aggravated mali-
6 cious mischief.

7 “(d) **JURISDICTION.**—Federal jurisdiction exists when the offense is
8 committed within the jurisdiction defined in section 1-1A4(64) (spe-
9 cial jurisdiction); section 1-1A4(53) (piracy jurisdiction); section
10 1-1A4 (24) (Federal property jurisdiction); or section 1-1A4(28)
11 (financial institution jurisdiction).

12 **“Subchapter D.—Robbery, Theft, and Related Offenses**

“Sec.

“2-8D1. Armed Robbery.

“2-8D2. Robbery.

“2-8D3. Theft.

“2-8D4. Receiving Stolen Property.

“2-8D5. Scheme to Defraud.

“2-8D6. Misapplication of Entrusted Property.

“2-8D7. Interference with Security Interest.

“2-8D8. Joyriding.

13 **“§ 2-8D1. Armed Robbery**

14 “(a) **OFFENSE.**—A person is guilty of armed robbery if he or an
15 accomplice is armed with a dangerous weapon and in the course of
16 engaging in conduct constituting, in fact, theft, he takes property
17 of another from the person or the immediate presence of another and
18 uses force or the threat of causing immediate bodily injury:

19 “(1) to prevent or overcome resistance to the taking of such
20 property or to the retention of such property immediately after
21 the taking; or

22 “(2) to compel the other person to deliver up such property
23 or to engage in other conduct which aids in the taking or carrying
24 away of such property.

25 “(b) **INCLUDED OFFENSE.**—Robbery is an offense included in armed
26 robbery.

27 “(c) **GRADING.**—The offense is a Class B felony.

28 “(d) **COMPOUND GRADING.**—The offense is:

29 “(1) a Class A felony if the following additional offense is
30 committed: murder; or

31 “(2) a Class B felony if the following additional offense is
32 committed: maiming.

33 “(e) **JURISDICTION.**—Federal jurisdiction exists when the offense is
34 committed within the jurisdiction defined in section 1-1A4(64) (spe-
35 cial jurisdiction); section 1-1A4(53) (piracy jurisdiction); section

1 1-1A4(24) (Federal property jurisdiction); section 1-1A4(28)
2 (financial institution jurisdiction); or section 1-1A4(3) affects com-
3 merce jurisdiction).

4 **“§ 2-8D2. Robbery**

5 “(a) OFFENSE.—A person is guilty of robbery if, in the course of
6 engaging in conduct, constituting, in fact, theft, he takes property
7 of another from the person or the immediate presence of another per-
8 son and uses force or the threat of causing immediate bodily injury:

9 “(1) to prevent or overcome resistance to the taking of such
10 property or to the retention of such property immediately after
11 the taking; or

12 “(2) to compel the other person to deliver up such property
13 or to engage in other conduct which aids in the taking or carrying
14 away of such property.

15 “(b) GRADING.—Robbery is a Class C felony if such person or
16 an accomplice causes bodily injury to another person. Otherwise it is
17 a Class D felony.

18 “(c) COMPOUND GRADING.—The offense is:

19 “(1) a Class A felony if the following additional offense is
20 committed: murder; or

21 “(2) a Class B felony if the following additional offense is
22 committed: maiming.

23 “(d) JURISDICTION. Federal jurisdiction exists when the offense is
24 committed within the jurisdiction defined in section 1-1A4(64) (spe-
25 cial jurisdiction); section 1-1A4(53) (piracy jurisdiction); section
26 1-1A4(24) (Federal property jurisdiction); section 1-1A4(28)
27 (financial institution jurisdiction); or section 1-1A4(3) (affects com-
28 merce jurisdiction).

29 **“§ 2-8D3. Theft**

30 “(a) OFFENSE.—A person is guilty of theft if, without authority
31 and with intent to steal, he obtains property of another.

32 “(b) ESTABLISHMENT OF INTENT TO STEAL.—Intent to steal is estab-
33 lished by proof of any of the following:

34 “(1) converting without authority to the use of the person or
35 another person property of another in his care or custody or subject
36 to his control or right of control;

37 “(2) obtaining property of another by knowingly creating or
38 reinforcing a false impression as to a present or past fact, or by
39 omitting to disclose any fact necessary in order to make statements

made not misleading, or by preventing the other person from acquiring information which would adversely affect his judgment of a transaction;

“(3) obtaining property of another :

“(i) by knowingly engaging in conduct prohibited, in fact, by section 2-8F4 (unfair commercial practices), or

“(ii) by means of an express or implied representation that the person or a third person will in the future engage in particular conduct when he does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct.

The person's intent or belief that the promise would not be performed may not be inferred solely because the promise was not performed, but it may be inferred by nonperformance plus evidence of a scheme to defraud, lack of capacity to engage in the promised conduct, conduct, in fact, prohibited by a pertinent licensing or regulatory provision, transfer of assets to avoid civil liability for breach of contract, or other proof that the circumstances of the situation are inconsistent with an absence of intent to steal;

“(4) failing to take reasonable measures to restore property of another that the person knows to have been lost, mislaid, or delivered by mistake and converting the property to the use of himself or of a third person;

“(5) obtaining property and inducing the suppliers to agree to payment on a credit basis by use of a credit card which the person knows to be stolen, forged, revoked, cancelled, or in any way invalid, or which he knows he is not authorized to use;

“(6) obtaining property by issuing or passing a check for the payment of money upon any bank or other depository with knowledge that the maker or drawer has no account, funds, or credit at such bank or other depository for the payment of such instrument;

“(7) avoiding payment for services rendered, by stealth, force, intimidation, deception, trick, artifice, or any misrepresentation of fact which the person knows to be false;

“(8) obtaining services or avoiding payment for services rendered, by means of tampering or making connection with or in any manner adjusting, altering, or modifying by mechanical, electrical, acoustical, or other means any of the equipment of the supplier, including a meter or other device provided for measuring the

1 amount of services rendered or any device designed to supply or to
2 prevent the supply of services either to the community in gen-
3 eral or to a particular structure;

4 “(9) using or diverting to the use of the person or of a third
5 person labor in the employ of another person or business, or com-
6 mercial or industrial equipment or facilities of another person,
7 knowing that the user is not entitled to the use of such labor,
8 equipment, or services; or

9 “(10) any other similar situation.

10 “(c) PRESUMPTION OF THEFT.—Proof that :

11 “(1) the defendant was found in unexplained possession of
12 property of another that had been recently obtained by conduct
13 constituting, in fact, theft gives rise to a presumption that the
14 defendant committed the theft;

15 “(2) a public servant or an agent of a financial institution
16 has failed to pay or account, upon authorized demand, for
17 money or property entrusted to him as part of his duties, or if an
18 audit reveals a shortage or falsification of his accounts, gives rise
19 to a presumption of theft by such public servant or agent;

20 “(3) there was a shipment gives rise to a presumption that the
21 place from which and to which the shipment was made is as desig-
22 nated in the waybill or other shipping document of such ship-
23 ment; or

24 “(4) property was shipped by a pipeline system extending
25 interstate gives rise to a presumption that the shipment was
26 interstate in character.

27 “(d) GRADING.—The offense is :

28 “(1) a Class B felony if the amount of the property or services
29 stolen exceeds \$100,000 in value;

30 “(2) a Class C felony if :

31 “(i) the amount of the property or services stolen exceeds
32 \$1,000 in value;

33 “(ii) the property stolen is a vehicle or a dangerous
34 weapon;

35 “(iii) the property consists of any government file, record,
36 document, or other government paper stolen from any govern-
37 ment office or from any public servant;

38 “(iv) the property stolen consists of any implement, paper,
39 or other thing uniquely associated with the preparation of any
40 money, stamp, bond, or other document, instrument, or obli-
41 gation of the United States; or

1 “(v) the property stolen consists of a key or other imple-
2 ment uniquely suited to provide access to property the theft
3 of which would be a felony and it was stolen to gain such
4 access;

5 “(3) a Class D felony if the amount of the property or services
6 stolen exceeds \$500 in value;

7 “(4) a Class E felony if the amount of the property or services
8 stolen exceeds \$100 in value; or

9 “(5) a misdemeanor if the amount of the property or services
10 stolen exceeds \$50 in value.

11 Otherwise it is a violation.

12 “(e) JURISDICTION.—Federal jurisdiction exists when the offense
13 is committed within the jurisdiction defined in section 1-1A4(64)
14 (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); sec-
15 tion 1-1A4(24) (Federal property jurisdiction); section 1-1A4(28)
16 (financial institution jurisdiction); section 1-1A4(69) (mails jurisdic-
17 tion); section 1-1A4(12) (commerce jurisdiction); or under any of
18 the following specific jurisdiction bases:

19 “(1) misrepresentation of Federal interest—when the offense is
20 committed by a misrepresentation of United States ownership,
21 guarantee, insurance, or other interest of the United States in
22 property involved in a transaction;

23 “(2) Indian property—when the subject of the offense is prop-
24 erty owned by or in the custody of a tribe, band, or community of
25 Indians which is subject to Federal statutes relating to Indian
26 affairs or of any corporation, association, or group which is orga-
27 nized under any of such statutes;

28 “(3) employee benefit plans—when the subject of the offense is
29 property owned by or in the custody of any employee welfare
30 benefit plan or employee pension benefit plan subject to chapter
31 10, title 29, United States Code;

32 “(4) public work kickbacks—when any part of the compensa-
33 tion of a person employed in the construction, prosecution, com-
34 pletion, or repair of any Federal public building, Federal public
35 work, or building or work financed in whole or in part by loans or
36 grants from the United States is obtained or retained by a threat
37 or deception in relation to that person’s employment;

38 “(5) funds insured by Department of Housing and Urban De-
39 velopment—when the offense is committed in a transaction for a
40 loan, advance of credit, or mortgage insured by the United States
41 Department of Housing and Urban Development;

1 “(6) small business investment companies—when the offense is
2 committed by an agent, or person connected in any capacity with
3 a small business investment company, as defined in section 662,
4 title 15, United States Code, and the subject of the offense is
5 property owned by or in the custody of such small business in-
6 vestment company;

7 “(7) registered investment companies—when the subject of the
8 offense is property owned by or in the custody of a registered in-
9 vestment company, as defined in section 80a, title 15, United
10 States Code;

11 “(8) futures commission merchants—when the offense is com-
12 mitted by a futures commission merchant, as defined in section 2,
13 title 7, United States Code, or an agent of such merchant, and
14 the subject of the offense is property of a customer received by
15 such future commission merchant to margin guarantee or secure
16 trades or contracts as the result of such trades or contracts;

17 “(9) common carriers—when the offense is committed by an
18 agent of a person engaged in commerce as a common carrier,
19 and the subject of the offense is property owned by or in the
20 custody of such common carrier;

21 “(10) Federal economic opportunity program—when the
22 offense is committed by an agent, or person connected in
23 any capacity with any agency or person receiving financial
24 assistance under chapter 34, title 42, United States Code, and
25 the subject of the offense is property which is the subject of a
26 grant or contract of assistance under that chapter;

27 “(11) employment in Federal economic opportunity pro-
28 gram—when property of a person is obtained or retained by a
29 threat in relation to that person’s employment under a grant or
30 contract of assistance under chapter 34, title 42, United States
31 Code;

32 “(12) labor organizations—when the offense is committed by
33 an agent of a labor organization, as defined in section 152, title 29,
34 United States Code, and the subject of the offense is property
35 owned by or in the custody of such labor organization;

36 “(13) commodity credit corporation—when the subject of the
37 offense is properly mortgaged or pledged to the Commodity
38 Credit Corporation or is property mortgaged or pledged as secu-
39 rity for any promissory note or other evidence of indebtedness
40 which the Corporation has guaranteed or is obligated to purchase
41 upon tender;

1 . “(14) farm credit agencies—when the subject of the offense is
2 property mortgaged or pledged to or held by farm credit agencies,
3 including the Farm Credit Administration, any Federal inter-
4 mediate credit bank, the Federal Crop Insurance Corporation, or
5 the Farmers Home Administration, or any production credit as-
6 sociation organized under sections 1131–1134m of title 12, United
7 States Code;

8 “(15) rural electrification and telephone programs—when the
9 subject of the offense is property mortgaged or pledged to or held
10 by the Rural Electrification Administration or the Rural Tele-
11 phone Bank; or

12 “(16) licensed warehouse—when the subject of the offense is
13 stored in a warehouse licensed under the United States Warehouse
14 Act (7 U.S.C. 241).

15 **“§ 2–8D4. Receiving Stolen Property**

16 (a) **OFFENSE.**—A person is guilty of receiving stolen property if he
17 receives such property, knowing that it has been or probably has been
18 obtained by such conduct.

19 “(b) **AFFIRMATIVE DEFENSE.**—It is an affirmative defense that the
20 defendant received the property with intent to notify an appropriate
21 law enforcement officer or the owner of the property of his knowl-
22 edge or belief.

23 (c) **PRESUMPTIONS.**—Proof that:

24 “(1) the defendant acquired stolen property for a considera-
25 tion far below its value, or that he was found in possession of
26 recently stolen property, gives rise to a presumption that he
27 knew or believed such property to have been stolen or probably
28 to have been stolen; or

29 “(2) the defendant is found in possession or control of property
30 stolen on two or more separate occasions within the twelve month
31 period immediately preceding his arrest on the present charge
32 of receiving stolen property gives rise to a presumption that he
33 knew or believed such property to have been stolen or probably
34 to have been stolen.

35 “(d) **GRADING.**—The offense is a Class B felony if the amount of
36 the property exceeds \$100,000 in value. Otherwise it is a Class C
37 felony.

38 “(e) **DEFINITION.**—As used in this section:

39 “(1) ‘receives’ includes buys, retains, possesses, controls, sells,
40 transfers, transports, sends, or conceals; and

“(2) ‘stolen property’ means property obtained by conduct constituting, in fact, burglary, robbery, theft, a scheme to defraud, extortion, or coercion.

“(f) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(24) (Federal property jurisdiction); section 1-1A4(12) (commerce jurisdiction); or section 1-1A4(3) (affects commerce jurisdiction).

“§ 2-8D5. Scheme to Defraud

“(a) OFFENSE.—A person is guilty of a scheme to defraud if he devises or engages in a scheme to defraud or to obtain from another person property by false or fraudulent pretenses, representations or promises, and he or an accomplice engages in or causes the performance of conduct to effect the scheme.

“(b) ATTEMPT AND CONSPIRACY PRECLUDED.—Section 1-2A4 (Criminal Attempt) and section 1-2A5 (Criminal Conspiracy) are inapplicable under this section.

“(c) GRADING.—The offense is a Class D felony.

“(d) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(24) (Federal property jurisdiction); Section 1-1A4(28) (financial institution jurisdiction); section 1-1A4(69) (mails jurisdiction); section 1-A14(12) (commerce jurisdiction); or section 1-1A4(3) (affects commerce jurisdiction).

“§ 2-8D6. Misapplication of Entrusted Property

“(a) OFFENSE.—A person is guilty of an offense if he disposes of, uses, or transfers any interest in property which has been entrusted to him:

“(1) as a fiduciary,

“(2) in his capacity as a public servant, or

“(3) as an agent or person controlling a financial institution,

in a manner that he knows is not authorized and that he knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.

“(b) GRADING.—The offense is a Class D felony.

“(c) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); section 1-1A4(24) (Federal property jurisdiction); section 1-1A4(28) (financial institution jurisdiction); section 1-1A4(69) (mails jurisdiction);

section 1-1A4(12) (commerce jurisdiction); or any of the specific jurisdiction bases listed in section 2-8D3(e).

“§ 2-8D7. Interference with Security Interest

“(a) OFFENSE.—A person is guilty of an offense if he owns or possesses property subject to a security interest and, without authority, knowingly destroys, removes, conceals, encumbers, transfers or otherwise deals with such property.

“(b) GRADING.—The offense is a Class E felony.

“(c) JURISDICTION.—Federal jurisdiction exists when the security interest is Federal.

“§ 2-8D8. Joyriding

“(a) OFFENSE.—A person is guilty of joyriding if, without authority, he knowingly obtains a vehicle which is property of another.

“(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense that the defendant reasonably believed that the owner of the vehicle or an authorized agent of the owner would have consented.

“(c) GRADING.—The offense is a misdemeanor.

“(d) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction) or section 1-1A4(24) (Federal property jurisdiction).

“Subchapter E.—Forgery and Related Offenses

“Sec.

“2-8E1. Counterfeiting.

“2-8E2. Forgery.

“2-8E3. Counterfeiting Paraphernalia.

“2-8E4. Trafficking in Specious Securities.

“2-8E5. Making or Passing Slugs.

“2-8E6. Issuance of Written Instrument Without Authority.

“§ 2-8E1. Counterfeiting

“(a) OFFENSE.—A person is guilty of counterfeiting if, with intent to defraud another person or with knowledge that he is facilitating such defrauding, he falsely makes any writing or knowingly possesses a falsely made writing, and the writing is or purports to be or if completed is calculated to become or represent an obligation or other security of the United States or of a foreign government.

“(b) GRADING.—The offense is a Class B felony if the offense is committed as part of a scheme to defraud another person or persons of property of a value in excess of \$100,000. Otherwise it is a Class C felony.

“(c) DEFINITION.—As used in this section and section 2-8E3 (Counterfeiting Paraphernalia), ‘obligation or other security of the United States’ includes a bond, certificate of indebtedness, national bank cur-

rency, Federal Reserve note, Federal Reserve bank note, coupon, United States note, Treasury note, gold certificate, silver certificate, fractional note certificate of deposit, a stamp, postage meter stamp, or other representation of value of whatever denomination, issued under a Federal statute or a rule, regulation, or order issued under such statute, and a canceled United States stamp.

“(d) JURISDICTION.—Federal jurisdiction exists when the writing is Federal or foreign.

“§ 2-8E2. Forgery

“(a) OFFENSE.—A person is guilty of forgery if, with intent to defraud another person or with knowledge that he is facilitating such defrauding, he falsely makes any writing or knowingly possesses a falsely made writing.

“(b) GRADING.—The offense is:

“(1) a Class B felony if the offense is committed as part of a scheme to defraud another person or persons of property of a value in excess of \$100,000; or

“(2) a Class C felony if:

“(i) the person is a public servant or an agent of a financial institution and the offense is committed under color of office or is made possible by the person’s position;

“(ii) the person forges any writing from plates, dies, molds, photographs, or other similar instruments designed for multiple reproduction;

“(iii) the person falsely makes a United States passport or certificate of United States naturalization or citizenship; or

“(iv) the offense is committed as part of a scheme to defraud another person or persons of property of a value in excess of \$1,000.

Otherwise it is a Class D felony.

“(c) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(53) (piracy jurisdiction); section 1-1A4(12) (commerce jurisdiction); section 1-1A4(69) (mails jurisdiction); or section 1-1A4(28) (financial institution jurisdiction).

“§ 2-8E3. Counterfeiting Paraphernalia

“(a) OFFENSE.—Except as otherwise provided, a person is guilty of an offense if he:

“(1) knowingly possesses or traffics in or otherwise has within his control any plate, stone, paper, tool, die, mold, or other imple-

ment or thing uniquely associated with or fitted for the preparation of any writing by conduct constituting, in fact, counterfeiting;

“(2) knowingly photographs or otherwise makes a copy of:

“(i) money or an obligation or other security of the United States or of a foreign government, or any part of such security, or

“(ii) any plate, stone, tool, die, mold, or other implement or thing uniquely associated with or fitted for the preparation of any writing, in fact, described in paragraph (1); or

“(3) knowingly possesses or traffics in or otherwise has within his control any photograph or copy the making of which is, in fact, prohibited by paragraph (2).

“(b) GRADING.—The offense is a Class E felony.

“(c) JURISDICTION.—Federal jurisdiction exists when the writing is or could be Federal or foreign.

“§ 2-8E4. Trafficking in Specious Securities

“(a) OFFENSE.—A person is guilty of trafficking in specious securities if he traffics in or receives securities which are, in fact, forged or counterfeited, knowing or believing that such securities have been or probably have been so made.

“(b) GRADING.—The offense is a Class C felony.

“(c) DEFINITION.—As used in this section, ‘receives’ includes buys, retains, possesses, controls, sells, transfers, transports, sends, or conceals.

“(d) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(24) (Federal property jurisdiction); section 1-1A4(12) (commerce jurisdiction); section 1-1A4(69) (mails jurisdiction); or section 1-1A4(28) (financial institution jurisdiction).

“§ 2-8E5. Making or Passing Slugs

(a) OFFENSE.—A person is guilty of an offense if, with intent to defraud or with knowledge that he is facilitating such defrauding by another person of a supplier of property or services sold or offered by means of a coin machine, coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle, he makes or passes a slug.

“(b) GRADING.—The offense is:

“(1) a Class E felony if the offense is committed as part of a scheme to defraud another person or persons of property or serv-

ices of a value in excess of \$100 or if the offense involves slugs which exceed \$100 in value; or

“(2) a misdemeanor if the offense is committed as part of a scheme to defraud another person or persons of property or services of a value in excess of \$50 or if the offense involves slugs which exceed \$50 in value.

Otherwise it is a violation.

“(c) DEFINITION.—As used in this section, ‘slug’ means a metal, paper, or other object or article which, by virtue of its size, shape, or any other quality, is capable of being inserted, deposited, or otherwise used as an improper but effective substitute for a genuine coin, bill, pass, key, or token in a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle which is designed to automatically offer, provide, assist in providing, or permit the acquisition of some property or services in return for the insertion or deposit of a genuine coin, bill, pass, key, or token.

“(d) JURISDICTION.—Federal jurisdiction exists when the offense involves a machine, device, or receptacle designed to receive currency of the United States.

“§ 2-8E6. Issuance of Written Instrument Without Authority

“(a) OFFENSE.—A person is guilty of an offense if, without authority, he knowingly issues a written instrument.

“(b) GRADING.—The offense is a Class D felony.

“(c) DEFINITION.—As used in this section, ‘written instrument’ means money, a money order note, bond, or other evidence of indebtedness, passport, visa, certificate of naturalization or citizenship, contract, or security.

“(d) JURISDICTION.—Federal jurisdiction exists when the written instrument is Federal or when the offense is committed within the jurisdiction defined in section 1-1A4(28) (financial institution jurisdiction).

“Subchapter F.—Economic and Regulatory Offenses

“Sec.

“2-8F1. Bankruptcy Fraud.

“2-8F2. Commercial Bribery.

“2-8F3. Environmental Spoliation.

“2-8F4. Unfair Commercial Practices.

“2-8F5. Securities Violations.

“2-8F6. Regulatory Offenses.

“§ 2-8F1. Bankruptcy Fraud

“(a) OFFENSE.—A person is guilty of an offense if, with intent to deceive a court or its officers or to harm creditors or other persons, he:

1 “(1) transfers or conceals any property belonging to the estate
2 of a bankrupt;

3 “(2) receives any material amount of property from a bankrupt
4 after the filing of such person’s bankruptcy proceeding;

5 “(3) transfers or conceals, in contemplation of a bankruptcy
6 proceeding, his property or property of another;

7 “(4) transfers or conceals, in contemplation of a state insolvency
8 proceeding, his property or property of another;

9 “(5) conceals, destroys, mutilates, alters, or makes a false entry
10 in any document affecting or relating to the property or affairs
11 of a bankrupt, or withholds any such document from the receiver,
12 trustee, or other officer of the court entitled to its possession; or

13 “(6) gives, obtains, or receives a benefit for acting or forbearing
14 to act in any bankruptcy proceeding.

15 “(b) DURATION OF OFFENSE.—The concealment of any property of
16 a bankrupt continues until the bankrupt is discharged or a discharge
17 is finally denied.

18 “(c) GRADING.—The offense is:

19 “(1) a Class B felony if the amount of the property exceeds
20 \$100,000 in value; or

21 “(2) a Class C felony if the amount of the property exceeds
22 \$1,000 in value.

23 Otherwise it is a Class D felony.

24 “(d) DEFINITION.—As used in this section, ‘bankrupt’ means a debtor
25 by or against whom a petition has been filed under title 11, United
26 States Code, and ‘bankruptcy proceeding’ includes any proceeding, ar-
27 rangement, or plan under title 11.

28 “(e) JURISDICTION.—Federal jurisdiction exists over the offense
29 defined in subsection (a) (4) when the offense is committed within the
30 jurisdiction defined in section 1-1A4(12) (commerce jurisdiction).
31 Otherwise Federal jurisdiction exists when the offense is committed.

32 **“§ 2-8F2. Commercial Bribery**

33 “(a) OFFENSE.—A person is guilty of commercial bribery if:

34 “(1) without authority, he confers a pecuniary benefit upon:

35 “(i) an employee or other agent, with intent to influence his
36 conduct in relation to the affairs of his employer or principal;

37 “(ii) a hiring agent or an official or employee in charge of
38 employment, with intent to influence him to hire, retain in em-
39 ployment, discharge, or suspend another person from employ-
40 ment;

1 “(iii) a fiduciary, with intent to influence him to act con-
2 trary to his fiduciary obligation; or

3 “(iv) a participant in a publicly exhibited sports contest,
4 with intent to influence him not to give his best efforts or to
5 perform his duties improperly; or

6 “(2) he accepts a pecuniary benefit from another person:

7 “(i) as an employee or other agent, upon an understanding
8 that the benefit will influence his conduct adversely to the
9 interest of his employer or principal;

10 “(ii) as a hiring agent or as an official or employee in
11 charge of employment, upon an understanding that someone
12 shall be hired, retained in employment, discharged, or sus-
13 pended from employment, unless such person is conducting
14 an employment agency;

15 “(iii) as a fiduciary, upon an understanding that the bene-
16 fit will influence him to act contrary to his fiduciary obliga-
17 tion; or

18 “(iv) as a participant or official in a publicly exhibited
19 sports contest, upon an understanding that he will not give
20 his best efforts or will perform his duties improperly.

21 “(b) GRADING.—The offense is a Class C felony.

22 “(c) DEFINITION.—As used in this section, ‘sports contest’ means
23 any professional or amateur sport, athletic game, or contest of wits or
24 ability, or race or contest involving machines, persons, or animals.

25 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
26 committed within the jurisdiction defined in section 1-1A4(64)
27 (special jurisdiction) or section 1-1A4(12) (commerce jurisdiction);
28 or when the person committing the offense or the person who is the
29 subject of the offense is an agent or fiduciary:

30 “(1) of a financial institution or a small business investment
31 company, as defined in section 662, title 15, United States Code,
32 and the offense is committed in connection with his duties;

33 “(2) of an employee welfare benefit plan or employee pension
34 benefit plan subject to chapter 10 of title 29, United States Code,
35 or is an employer any of whose employees are covered by such
36 plan, or is an agent or fiduciary of an employer or of an employee
37 organization any of whose employees or members are covered by
38 such plan, or is a person who, or an agent or fiduciary of an orga-
39 nization which, provides benefit plan services to such plan, and the
40 offense is committed in connection with his duties; or

1 “(3) of a military officers’ or servicemen’s club for personnel on
2 active duty, or of a military post exchange, and the offense is
3 committed in connection with his duties.

4 **“§ 2-8F3. Environmental Spoliation**

5 “(a) OFFENSE.—A person is guilty of environmental spoliation if
6 he knowingly:

7 “(1) pollutes the water, air, or land in the course of trafficking
8 in property;

9 “(2) in violation of a Federal statute or a rule, regulation, or
10 order under such statute; and

11 “(3) such violation is gross or the person manifests flagrant
12 disregard for the environment.

13 “(b) EVIDENCE.—If evidence has been introduced tending to show
14 the existence of the circumstances described in subsection (a) (1) and
15 (a) (2), and direct evidence of the actual belief of the defendant is
16 not available, then, for the purpose of showing that the conduct, shown
17 to have occurred manifested a flagrant disregard for the en-
18 vironment on the part of the defendant, the court may allow evidence
19 to be introduced tending to show the reputation of the defendant as to
20 regard for the environment in any community of which such person
21 was a member at the time of the violation.

22 “(c) GRADING.—The offense is a Class C felony.

23 “(d) JURISDICTION.—Federal jurisdiction exists when the offense
24 is committed within the jurisdiction defined in section 1-1A4(3)
25 (affects commerce jurisdiction).

26 **“§ 2-8F4. Unfair Commercial Practices**

27 “(a) OFFENSE.—A person is guilty of an offense if, in the course of
28 engaging in a business, occupation, or profession, he knowingly:

29 “(1) sells, offers for sale, or delivers less than the represented
30 quantity of any commodity or service;

31 “(2) sells, offers for sale, or delivers any commodity, product,
32 or object which is adulterated or mislabelled;

33 “(3) makes a false statement in any advertisement addressed
34 to the public or to a substantial number of persons, in connection
35 with the promotion of the person’s business, occupation, or profes-
36 sion or to maintain or increase sale or distribution of property
37 or services;

38 “(4) offers property or services, in any manner including ad-
39 vertising or other means of communication, as part of a scheme
40 with intent not to sell or provide the advertised property or serv-

ices at all, at the price or of the quality offered, or in a quantity sufficient to meet the reasonably expected public demand unless the advertisement states the approximate quantity available;

“(5) conducts, sponsors, organizes, or promotes a publicly exhibited sports contest with knowledge that he or another person has tampered with any person, animal, or thing with intent to prevent the contest from being conducted in accordance with the rules and usages purporting to govern it, or with knowledge that any participant, official, or other person associated with the contest has accepted or promised to accept any pecuniary benefit from another person upon an understanding that he will be influenced not to give his best efforts or that he will perform his duties improperly; or

“(b) DEFENSE.—It is a defense that a television or radio broadcasting station, or a publisher or printer of a newspaper, magazine, or other form of printed material broadcasts, publishes, or prints a false advertisement without knowledge of the advertiser’s intent to engage in conduct, in fact, prohibited by subsection (a) (3) or (a) (4).

“(c) GRADING.—The offense is a Class E felony.

“(d) DEFINITIONS.—As used in this section :

“(1) ‘adulterated’ means varying from the standard of composition of quality prescribed for the substance by Federal statute or regulation, or if none, as set by established commercial usage;

“(2) ‘mislabelled’ means having a label varying from the standard of disclosure in labeling prescribed by Federal statute or regulation, or if none, as set by established commercial usage; and

“(3) ‘sports contest’ means any professional or amateur sport, athletic game, or contest of wits or ability, or race or contest involving machines, persons, or animals.

“(e) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(28) (financial institution jurisdiction); section 1-1A4(69) (mails jurisdiction); section 1-1A4(12) (commerce jurisdiction); or section 1-1A4(3) (affects commerce jurisdiction).

§ 2-8F5. Securities Violations

“(a) OFFENSE.—A person is guilty of an offense if he :

“(1) knowingly engages in conduct prohibited, in fact, by or declared unlawful in title 15, United States Code, sections 77e, 77q, 77w, 77fff, 77xxx, 78i(a) (1)-(5), or 78j(b) (5); or

“(2) in a registration statement filed under subchapter I of title 15, United States Code, chapter 2A, or in an application, report, or other document filed under subchapter III of such chapter, or any rule, regulation, or order issued under such chapter, knowingly makes any untrue statement of a material fact or omits to state any material fact required to be stated in such statement or document or necessary to make the statements made not misleading.

“(b) GRADING.—The offense:

“(1) defined in subsection (a) (1) is a Class C felony; and

“(2) defined in subsection (a) (2) is a Class D felony.

“(c) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(69) (mails jurisdiction); section 1-1A4(12) (commerce jurisdiction); or section 1-1A4(3) (affects commerce jurisdiction).

“§ 2-8F6. Regulatory Offenses

“(a) APPLICABILITY.—The use of sanctions to enforce a penal regulation is governed by this section to the extent that another statute so provides.

“(b) REGULATORY SANCTIONS.—

“(1) NONCULPABLE.—A person is guilty of a violation if he engages in conduct prohibited by a penal regulation. Except to the extent required by the penal regulation, culpability need not be proved.

“(2) RECKLESS.—A person is guilty of a misdemeanor if he recklessly engages in conduct prohibited by a penal regulation. Culpability as to the existence of the penal regulation need not be proved.

“(3) KNOWING.—A person is guilty of a Class E felony if he knowingly engages in conduct prohibited by a penal regulation.

“(4) FLOUTING REGULATORY AUTHORITY.—A person is guilty of a Class D felony if he flouts regulatory authority by knowing and continued disobedience of any body of related penal regulations. or by disobedience of a lawful cease and desist order served on him by a department or agency.

“(5) DANGEROUS.—A person is guilty of a Class D felony if he knowingly engages in conduct prohibited by a penal regulation and by such conduct, in fact, creates a substantial likelihood of

harm to human life or health, or of any other harm against which the penal regulation was directed.

“(c) **DEFINITION.**—As used in this section, ‘penal regulation’ means any requirement of a statute, regulation, rule, or order which is enforceable by criminal sanctions or civil remedies.

“Chapter 9.—OFFENSES AGAINST PUBLIC ORDER

“Subchapter

“A. General Provisions.

“B. Civil Disorder.

“C. Predatory Practices.

“D. Firearms and Explosives.

“E. Drugs.

“F. Gambling, Prostitution, and Obscenity.

“G. Other Offenses.

“Subchapter A.—General Provisions

“Sec.

“2-9A1. Definition of Terms.

“§ 2-9A1. Definition of Terms

“As used in this chapter, unless it is otherwise provided or a different meaning plainly is required :

“(1) ‘ammunition’ has the meaning prescribed in the firearms regulatory law ;

“(2) ‘explosive material’ has the meaning prescribed in the firearms regulatory law ;

“(3) ‘firearms’ has the meaning prescribed in the firearms regulatory law ;

“(4) ‘firearms regulatory law’ means chapters 53, 97, 98, and 99, title 26, United States Code, and any rule, regulation, or order issued under such chapter ;

“(5) ‘prostitute’ means a person who engages in a sexual act or acts for hire ;

“(6) ‘prostitution business’ means any place where prostitution is regularly carried on, or any business which derives funds from prostitution regularly carried on, by a person under the control, management, or supervision of another person ;

“(7) ‘riot’ means a disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates immediate danger of serious damage or injury to property or persons or substantially obstructs law enforcement or other government function ; and

“(8) ‘sexual act’ means sexual contact consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, or the mouth and the vulva. Such contact occurs upon penetration, however slight, Emission is not required.

"Subchapter B.—Civil Disorder

"Sec.

"2-9B1. Inciting Riot.

"2-9B2. Arming Rioters.

"2-9B3. Engaging in a Riot.

"2-9B4. Disobedience of Public Safety Order Under Riot Conditions.

"§ 2-9B1. Inciting Riot

"(a) OFFENSE.—A person is guilty of an offense if he :

"(1) incites or urges five or more persons to create or engage in a riot under circumstances in which there is substantial likelihood his advocacy will imminently produce a riot ; or

"(2) gives commands, instructions, or directions to five or more persons in furtherance of a riot.

"(b) GRADING.—The offense defined in subsection (a) (2) is a Class C felony if the riot involves 50 accomplices. Otherwise the offense is a Class D felony.

"(c) COMPOUND GRADING.—The offense is :

"(1) a Class A felony if any of the following additional offenses is committed : murder or aggravated kidnapping ; or

"(2) a Class B felony if any of the following additional offenses is committed : maiming, aggravated arson, or aggravated malicious mischief.

"(d) JURISDICTION.—Federal jurisdiction exists if the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction) or section 1-1A4(12) (commerce jurisdiction).

"§ 2-9B2. Arming Rioters

"(a) OFFENSE.—A person is guilty of arming rioters if :

"(1) he knowingly supplies a firearm or destructive device for use in a riot ;

"(2) with intent that it be used in a riot, he tells another person how to prepare or use a firearm or destructive device ; or

"(3) he is knowingly armed with a firearm or destructive device while engaging in a riot.

"(b) GRADING.—The offense is a Class C felony.

"(c) COMPOUND GRADING.—The offense is :

"(1) a Class A felony if any of the following additional offenses is committed : murder or aggravated kidnapping ; or

"(2) a Class B felony if any of the following additional offenses is committed : maiming, aggravated arson, or aggravated malicious mischief.

1 “(d) JURISDICTION.—Federal jurisdiction exists if the offense is
2 committed within the jurisdiction defined in section 1-1A4(64) (spe-
3 cial jurisdiction) or section 1-1A4(12) (commerce jurisdiction).

4 **“§ 2-9B3. Engaging in a Riot**

5 “(a) OFFENSE.—A person is guilty of an offense if he engages in a
6 riot.

7 “(b) GRADING.—The offense is a Class E felony.

8 “(c) COMPOUND GRADING.—The offense is :

9 “(1) a Class A felony if any of the following additional of-
10 fenses is committed: murder or aggravated kidnapping; or

11 “(2) a class B felony if any of the following additional of-
12 fenses is committed: maiming, aggravated arson, or aggravated
13 malicious mischief.

14 “(d) JURISDICTION.—Federal jurisdiction exists if the offense is
15 committed within the jurisdiction defined in section 1-1A4(64) (spe-
16 cial jurisdiction) or section 1-1A4(12) (commerce jurisdiction).

17 **“§ 2-9B4. Disobedience of Public Safety Order Under Riot**
18 **Conditions**

19 “(a) OFFENSE.—A person is guilty of an offense if, during a riot,
20 he disobeys a reasonable public safety order to move, disperse, or
21 refrain from specified activities in the immediate vicinity of the riot.

22 “(b) GRADING.—The offense is a violation.

23 “(c) DEFINITION.—As used in this section, a ‘public safety order’ is
24 an order designed to prevent or control disorder or to promote the
25 safety of persons or property, issued by a public servant having super-
26 visory authority over police, fire, military, or other public safety
27 forces.

28 “(d) JURISDICTION.—Federal jurisdiction exists when the public
29 servant is Federal.

30 **“Subchapter C.—Predatory Practices**

“Sec.

“2-9C1. Racketeering Activity.

“2-9C2. Loansharking.

“2-9C3. Extortion.

“2-9C4. Coercion.

31 **“§ 2-9C1. Racketeering Activity**

32 “(a) OFFENSE.—A person is guilty of racketeering activity if:

33 “(1) through a pattern of racketeering activity or through the
34 collection of an unlawful debt, he :

35 “(i) acquires or maintains any interest in, or

36 “(ii) conducts or participates in the conduct of any enter-
37 prise; or

1 “(2) having received income from a pattern of racketeering
2 activity or through collection of an unlawful debt, in the conduct
3 of which he was an accomplice, he :

4 “(i) uses, or

5 “(ii) invests

6 any part of such income or the proceeds of such income in the
7 acquisition of any interest in or the establishment or operation of
8 any enterprise.

9 “(b) **AFFIRMATIVE DEFENSE.**—It is an affirmative defense under
10 subsection (a) (2) that the investment was purchase of securities on
11 the open market without intent to control or participate in the control
12 of the issuer or of assisting another person to do so, if the securities of
13 the issuer held by the purchaser, the members of his immediate family,
14 and his or their accomplices in any pattern of racketeering activity or
15 the collection of an unlawful debt after such purchase do not amount
16 in the aggregate to one per centum of the outstanding securities of
17 any one class, and do not confer, either in law or in fact, the power
18 to elect one or more directors of the issuer.

19 “(c) **INCLUDED OFFENSE.**—Each offense designated in subsection
20 (e) (3) may be an offense included in racketeering activity.

21 “(d) **GRADING.**—The offense is a Class B felony.

22 “(e) **DEFINITIONS.**—As used in this section :

23 “(1) ‘enterprise’ includes any person, partnership, corpora-
24 tion, association, or other entity and any union or group of persons
25 associated together although not an entity ;

26 “(2) ‘pattern of racketeering activity’ means two or more
27 related, not isolated, acts of racketeering activity, one of which
28 occurred after the effective date of this section and the last of
29 which occurred within ten years (excluding any term of impris-
30 onment) after the commission of a prior act of racketeering
31 activity ;

32 “(3) ‘racketeering activity’ means any conduct constituting, in
33 fact, a violation of the following sections :

34 “2-6B2 (Preventing Arrest, Search, or Discharge of Other
35 Duties) ;

36 “2-6C1 (Obstruction of Justice) ;

37 “2-6E1 (Bribery) ;

38 “2-6E2 (Graft) ;

39 “2-6G3 (Trafficking in Taxable Object) ;

40 “2-6G4 (Smuggling) ;

- 1 “2-7B1 (Murder) ;
- 2 “2-7C1 (Maiming) ;
- 3 “2-7C2 (Aggravated Assault) ;
- 4 “2-7D1 (Aggravated Kidnapping) ;
- 5 “2-8B1 (Aggravated Arson) ;
- 6 “2-8C1 (Armed Burglary) ;
- 7 “2-8D1 (Armed Robbery) ;
- 8 “2-8D3 (Theft) where such offense is felonious ;
- 9 “2-8D4 (Receiving Stolen Property) ;
- 10 “2-8D5 (Scheme to Defraud) ;
- 11 “2-8E1 (Counterfeiting) ;
- 12 “2-8E2 (Forgery) ;
- 13 “2-8E4 (Trafficking in Specious Securities) ;
- 14 “2-8F1 (Bankruptcy Fraud) ;
- 15 “2-8F2 (Commercial Bribery) ;
- 16 “2-8F5 (Securities Violations) ;
- 17 “2-9C2 (Loansharking) ;
- 18 “2-9C3 (Extortion) ;
- 19 “2-9D3 (Illegal Firearms, Ammunition, or Explosive Mate-
- 20 rials Business) ;
- 21 “2-9D4 (Trafficking in and Receiving Limited-Use Fire-
- 22 arms;) ;
- 23 “2-9E1 (Drug Trafficking or Possession) ;
- 24 “2-9F1 (Illegal Gambling Business) ;
- 25 “2-9F3 (Illegal Prostitution Business) ; and
- 26 “section 186, title 29, United States Code (relating to pay-
- 27 ments between employer and representatives) ; and
- 28 “(4) ‘unlawful debt’ means a debt :
- 29 “(i) incurred or contracted in gambling activity, con-
- 30 ducted as a business, constituting, in fact, a violation of Fed-
- 31 eral, state, or local law ; or
- 32 “(ii) (a) which is unenforceable, in fact, in whole or in part
- 33 under a Federal or state law relating to usury or loanshark-
- 34 ing, and
- 35 “(b) which was incurred in connection with the business
- 36 of lending money or other property at a rate of interest which
- 37 is usurious, in fact, under Federal or state law, where the
- 38 usurious rate is at least twice the enforceable rate.
- 39 “(f) JURISDICTION.—Federal jurisdiction exists when Federal juris-
- 40 diction exists over the offenses constituting the racketeering activity.

1 **“§ 2-9C2. Loansharking**

2 “(a) OFFENSE.—A person is guilty of loansharking if he knowingly :

3 “(1) makes an extortionate extension of credit to another per-
4 son ;

5 “(2) advances money or other property to another person with
6 reasonable grounds to believe that such person intends to use such
7 money or property to make extortionate extensions of credit ; or

8 “(3) uses any extortionate means :

9 “(i) to collect any extension of credit, or

10 “(ii) to injure any person for nonrepayment of an exten-
11 sion of credit.

12 “(b) PRESUMPTION.—Proof that all of the following factors were
13 present in connection with an extension of credit gives rise to a pre-
14 sumption that the extension of credit was extortionate :

15 “(1) the repayment of the extension of credit, or the perform-
16 ance of any promise given in return for such extension would not
17 be enforceable through civil judicial processes against the debtor :

18 “(i) in the jurisdiction within which the debtor, if a hu-
19 man being, resides at the time the extension of credit was
20 made, or

21 “(ii) in every jurisdiction within which the debtor, if
22 other than a human being, was incorporated or qualified to
23 do business at the time the extension of credit was made ;

24 “(2) the extension of credit was made at a rate of interest in
25 excess of an annual rate of 45 per centum calculated according to
26 the actuarial method of allocating payments made on a debt be-
27 tween principal and interest, under which a payment is applied
28 first to the accumulated interest and the balance is applied to the
29 unpaid principal ;

30 “(3) at the time the extension of credit was made, the debtor
31 reasonably believed that either :

32 “(i) one or more extensions of credit by the creditor had
33 been collected or were attempted to be collected by extor-
34 tionate means, or the nonrepayment of such extension of
35 credit had been punished by extortionate means, or

36 “(ii) the creditor had a reputation for the use of extor-
37 tionate means to collect extensions of credit or to punish the non-
38 repayment of such extension of credit ; and

39 “(4) upon the making of the extension of credit, the total of
40 the extensions of credit made by the creditor to the debtor and

1 then outstanding, including unpaid interest or similar charges,
2 exceeded \$100.

3 “(c) EVIDENCE.—(1) If evidence has been introduced tending to
4 show the existence of any of the circumstances described in subsection
5 (b) (1) or (b) (2), and direct evidence of the actual belief of the debtor
6 as to the creditor’s collection practices is not available, then, for the
7 purpose of showing the understanding of the debtor and the creditor
8 at the time the extension of credit was made, the court may allow
9 evidence to be introduced tending to show the reputation of the credi-
10 tor as to collection practices in any community of which the debtor
11 was a member at the time of such extension of credit;

12 “(2) For the purpose of showing an implied threat as a means of
13 collection, evidence may be introduced tending to show that one or
14 more extensions of credit by the creditor were, known to the debtor
15 to have been made, collected, or attempted to be collected by extortion-
16 ate means or that nonrepayment of such extension of credit had been
17 punished by extortionate means;

18 “(3) If evidence has been introduced tending to show the existence,
19 at the time an extension of credit was made, of the circumstances de-
20 scribed in subsection (b) (1) or (b) (2), and direct evidence of the
21 actual belief of the debtor as to the creditor’s collection practices is
22 not available, then, for the purpose of showing that words or other
23 means of communication shown to have been employed as a means
24 of collection carried or probably carried an express or implied threat,
25 the court may allow evidence to be introduced tending to show the
26 reputation such creditor in any community of which the person against
27 whom the alleged threat was made was a member.

28 “(d) GRADING.—The offense is a Class C felony.

29 “(e) COMPOUND GRADING.—The offense is:

30 “(1) a Class A felony if any of the following additional
31 offenses is committed: murder, rape, or aggravated kidnapping; or

32 “(2) a Class B felony if any of the following additional of-
33 fenses is committed: maiming, aggravated arson, or aggravated
34 malicious mischief.

35 “(f) DEFINITIONS.—As used in this section:

36 “(1) ‘creditor’ means person who makes an extension of credit,
37 or who claims by, under, or through person making an extension
38 of credit;

39 “(2) ‘extension of credit’ means a loan, or a tacit or express
40 agreement, which provides that the repayment or satisfaction of a

1 debt, whether acknowledged or disputed, valid or invalid, and
2 however arising, may or will be deferred;

3 “(3) ‘extortionate extension of credit’ means an extension of
4 credit with respect to which it is the understanding of the credi-
5 tor and the debtor, at the time it is made, that delay in making
6 repayment or failure to make repayment could result in the use of
7 extortionate means; and

8 “(4) ‘extortionate means’ includes any tactic, approach, or
9 method which involves the use, or an express or implied threat of
10 use, of violence or other conduct constituting, in fact, crime to
11 cause injury to the person, property, or reputation of any person.

12 “(g) JURISDICTION.—Federal jurisdiction exists when the offense is
13 committed anywhere under the powers of Congress to regulate com-
14 merce and to establish uniform and effective laws on the subject of
15 bankruptcy, and under the findings of Congress expressed in section
16 201 of the Consumer Credit Protection Act (Public Law 90-321).

17 **“§ 2-9C3. Extortion**

18 “(a) OFFENSE.—A person is guilty of extortion if he intentionally
19 obtains services or property of another from another person, with the
20 consent of the other person, where such consent is induced by wrong-
21 ful use of actual or threatened force, violence or fear, or under color
22 of official right.

23 “(b) GRADING.—The offense is a Class C felony.

24 “(c) COMPOUND GRADING.—The offense is:

25 “(1) a Class A felony if any of the following additional of-
26 fenses is committed: murder, rape, or aggravated kidnapping; or

27 “(2) a Class B felony if any of the following additional offenses
28 is committed: maiming, aggravated arson, or aggravated mali-
29 cious mischief.

30 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
31 committed within the jurisdiction defined in section 1-1A4(3) (affects
32 commerce jurisdiction).

33 **“§ 2-9C4. Coercion**

34 “(a) OFFENSE.—A person is guilty of coercion if he intentionally
35 compels or induces another person to engage in conduct from which
36 the other person has a lawful right to abstain, or to abstain from
37 engaging in conduct in which he has a lawful right to engage, by
38 means of instilling in him a reasonable fear that if the demand is not
39 complied with, the person or another person will:

1 “(1) cause bodily injury to anyone;

2 “(2) cause damage to property; or

3 “(3) subject anyone to physical confinement.

4 “(b) **DEFENSE PRECLUDED.**—It is not a defense that, by reason of the
5 same conduct, the defendant also committed bribery, theft, or
6 any other offense in this subchapter.

7 “(c) **GRADING.**—The offense is a Class E felony.

8 “(d) **COMPOUND GRADING.**—The offense is:

9 “(1) a Class A felony if any of the following additional offenses
10 is committed: murder or aggravated kidnapping; or

11 “(2) a Class B felony if any of the following additional offenses
12 is committed: maiming, aggravated arson, or aggravated mali-
13 cious mischief.

14 “(e) **JURISDICTION.**—Federal jurisdiction exists when the offense is
15 committed within the jurisdiction defined in section 1-1A4(64) (special
16 jurisdiction); section 1-1A4(35) (high public servant jurisdiction);
17 section 1-1A4(53) (piracy jurisdiction); section 1-1A4(69) (mails
18 jurisdiction); or section 1-1A4(12) (commerce jurisdiction).

19 **“Subchapter D.—Firearms and Explosives**

“Sec.

“2-9D1. Para-Military Activities.

“2-9D2. Procuring or Supplying Dangerous Weapon for Criminal Activity.

“2-9D3. Illegal Firearms, Ammunition, or Explosive Materials Business.

“2-9D4. Trafficking in and Receiving Limited-Use Firearms.

“2-9D5. Possession of Explosives and Destructive Devices in Structures.

“2-9D6. Armed Criminal Conduct.

20 **“§ 2-9D1. Para-Military Activities**

21 “(a) **OFFENSE.**—Except as otherwise provided, a person is guilty
22 of para-military activities if, with intent to influence the conduct of
23 government of public affairs in the United States through the use or
24 the threat of the use of such weapons, he engages in or facilitates
25 acquisition, caching, use, or training in the use of dangerous weapons
26 by or on behalf of a group of ten or more persons.

27 “(b) **GRADING.**—The offense is a Class C felony if the person orga-
28 nizes, directs, leads, or provides a substantial portion of the resources
29 for para-military activities which involve a group of 50 or more
30 accomplices. Otherwise it is a Class D felony.

31 “(c) **COMPOUND GRADING.**—The offense is:

32 “(1) a Class A felony if any of the following additional of-
33 fenses is committed: murder or aggravated kidnapping; or

34 “(2) a Class B felony if any of the following additional offenses
35 is committed: maiming, aggravated arson, or aggravated mali-
36 cious mischief.

“(d) JURISDICTION.—Federal jurisdiction exists when the offense is committed anywhere.

“§ 2-9D2. Procuring or Supplying Dangerous Weapon for Criminal Activity

“(a) OFFENSE.—A person is guilty of an offense if he :

“(1) recklessly supplies a firearm, ammunition for a firearm, a destructive device, or an explosive to a person who intends to engage, with its aid or while armed with it, in conduct constituting, in fact, an offense ; or

“(2) with intent to engage in conduct constituting, in fact, an offense, procures or receives a firearm, ammunition for a firearm, a destructive device, or an explosive.

“(b) GRADING.—The offense is a Class D felony.

“(c) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction) ; section 1-1A4(69) (mails jurisdiction) ; or section 1-1A4(12) (commerce jurisdiction).

“§ 2-9D3. Illegal Firearms, Ammunition, or Explosive Materials Business

“(a) OFFENSE.—A person is guilty of an offense if he knowingly supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material for, a person, in fact, prohibited by the firearms regulatory law from receiving it.

“(b) GRADING.—The offense is a Class C felony if the person :

“(1) was not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to such firearm, destructive device, or explosive material ; or

“(2) engaged in the forbidden transaction under circumstances manifesting his readiness to supply or procure on other occasions without regard to lawful restrictions.

Otherwise it is a Class D felony.

“(c) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction) ; section 1-1A4(12) (commerce jurisdiction) ; section 1-1A4(3) (affects commerce jurisdiction) ; or when a licensee under the firearms regulatory law engages in the conduct.

“§ 2-9D4. Trafficking in and Receiving Limited-Use Firearms

“(a) OFFENSE.—A person is guilty of an offense if he :

“(1) traffics in firearms in violation, in fact, of the firearms regulatory law ; or

1 “(2) receives a firearm which is transferred to him in violation,
2 in fact, of the firearms regulatory law.

3 “(b) GRADING.—The offense is a Class D felony.

4 “(c) JURISDICTION.—Federal jurisdiction exists when the offense is
5 committed within the jurisdiction defined in section 1-1A4(64) (spe-
6 cial jurisdiction); section 1-1A4(12) (commerce jurisdiction); sec-
7 tion 1-1A4(3) (affects commerce jurisdiction); or when a licensee
8 under the firearms regulatory law engages in the conduct.

9 **“§ 2-9D5. Possession of Explosives and Destructive Devices in**
10 **Structures**

11 “(a) OFFENSE.—A person is guilty of an offense if he possesses an
12 explosive or destructive device in a structure which is owned, pos-
13 sessed, or used by or leased to the United States, without the consent of
14 the government agency or person responsible for the management of
15 such structure.

16 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense that the
17 explosive or destructive device was possessed for an authorized
18 purpose.

19 “(c) GRADING.—The offense is a Class D felony.

20 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
21 committed within the jurisdiction defined in section 1-1A4(24) (Fed-
22 eral property jurisdiction).

23 **“§ 2-9D6. Armed Criminal Conduct**

24 “(a) OFFENSE.—A person is guilty of an offense if, in the course of,
25 including immediate flight from, engaging in conduct constituting, in
26 fact, an offense, he:

27 “(1) displays or otherwise uses a firearm, explosive, or destruc-
28 tive device;

29 “(2) possesses a firearm, explosive, or destructive device; or

30 “(3) displays or otherwise uses a dangerous weapon or an imi-
31 tation of such weapon.

32 “(b) OFFENSES PRECLUDED.—This section is inapplicable under the
33 following sections:

34 “2-8C1 (Armed Burglary);

35 “2-8D1 (Armed Robbery);

36 “2-9B2 (Arming Rioters);

37 “2-9B3 (Engaging in a Riot);

38 “2-9D1 (Para-Military Activities; or

39 “2-9D2 (Procuring or Supplying Dangerous Weapons for
40 Criminal Activities).

“(c) NOT EXCLUSIVE.—Prosecution for or conviction of the offense defined in this section does not preclude consideration of the same conduct for purposes of grading or meeting the definition of other offenses in this code.

“(d) GRADING.—The offense is a Class D felony.

“(e) JURISDICTION.—Federal jurisdiction exists when the offense is Federal.

“Subchapter E.—Drugs

“Sec.

“2-E1. Drug Trafficking or Possession.

“§ 2-9E1. Drug Trafficking or Possession

“(a) OFFENSE.—Except as otherwise provided, a person is guilty of an offense if he knowingly:

“(1) traffics in a dangerous drug in a quantity in excess of the amount, in fact, established by the Attorney General, in accordance with the procedure prescribed in section 201 of the drug regulatory law, as indicative of trafficking for resale;

“(2) traffics in a dangerous or abusable drug;

“(3) traffics in a restricted drug; or

“(4) possesses a usable quantity of a dangerous, abusable, or restricted drug.

“(b) GRADING.—The offense:

“(1) defined in subsection (a) (1) is a Class B felony;

“(2) defined in subsection (a) (2) is a Class C felony if the person acted for profit or to further commercial distribution or if he transferred or otherwise disposed of such a drug to a person less than 18 years old or facilitated such transfer or other disposition;

“(3) defined in subsection (a) (2) or (a) (3) is a Class D felony;

“(4) defined in subsection (a) (4) is a Class D felony if the drug is a dangerous drug;

“(5) defined in subsection (a) (4) is a Class E felony if the drug is an abusable drug other than marijuana;

“(6) defined in subsection (a) (4) is a misdemeanor if the drug is marijuana; and

“(7) defined in subsection (a) (4) is a violation if the drug is a restricted drug.

“(c) COMPOUND GRADING.—The offense is:

“(1) a Class A felony if any of the following additional offenses is committed: murder, rape, or aggravated kidnapping;

“(2) a Class B felony if any of the following additional of-

fenses is committed: maiming, aggravated arson, or aggravated malicious mischief; or

“(3) a Class C felony if any of the following additional offenses is committed: bribery or extortion.

“(d) DEFINITIONS.—As used in this section:

“(1) ‘abusable drug’ means, unless modified by the Attorney General, any substance classified, in fact, as a schedule III or schedule IV controlled substance under section 202 of the drug regulatory law except as provided in the definition of dangerous drug in this section; marijuana; peyote;

“(2) ‘controlled substance’ means a drug or other substance, or immediate precursor, included, in fact, in schedule I, II, III, IV, or V of section 202 of the drug regulatory law. The term does not include distilled spirits, wine, malt beverages, or tobacco, under subtitle E of the Internal Revenue Code of 1954;

“(3) ‘dangerous drug’ means, unless modified by the Attorney General:

“(i) any substance classified, in fact, as a schedule I or schedule II controlled substance under section 202 of the drug regulatory law except a material, compound, or preparation which contains any quantity of marijuana or peyote and does not contain a dangerous drug;

“(ii) any material, compound, or preparation in a form not primarily adapted for oral use which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system: amphetamine, its salts, optical isomers, and salts of its optical isomers; phenmetrazine and its salts; any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers; methylphenidate;

“(4) ‘drug regulatory law’ means the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513);

“(5) ‘marijuana’ means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds of such plant; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except

1 the resin extracted from it), fiber, oil, or cake, or the sterilized
2 seed of such plant which is incapable of germination; and

3 “(6) ‘restricted drug’ means, unless modified by the Attorney
4 General, any substance classified, in fact, as a schedule V con-
5 trolled substance under section 202 of the drug regulatory law.

6 “(e) JURISDICTION.—Federal jurisdiction exists when the offense is
7 committed anywhere under the powers of Congress to regulate com-
8 merce and under the findings of Congress expressed in section 101 of
9 the drug regulatory law.

10 **“Subchapter F.—Gambling, Prostitution, and Obscenity**

“Sec.

“2-9F1. Illegal Gambling Business.

“2-9F2. Protecting State Antigambling Policies.

“2-9F3. Illegal Prostitution Business.

“2-9F4. Protecting State Antiprostitution Policies.

“2-9F5. Disseminating Obscene Material.

11 **“§ 2-9F1. Illegal Gambling Business**

12 “(a) OFFENSE.—A person is guilty of an offense if he participates in
13 a gambling business which :

14 “(1) is conducted, in fact, in violation of the law of the state
15 or political subdivision in which it is conducted ;

16 “(2) involves five or more persons who participate in all or
17 part of such business or another inter-related business, both busi-
18 nesses taken together ; and

19 “(3) has been or remains in substantially continuous operation
20 for a period in excess of thirty days or has gross receipts of
21 \$2,000 in any single day.

22 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense that the
23 gambling activity consisted of bingo, lottery, or a similar game of
24 chance and was conducted by an organization exempt from taxation
25 under section 501(c)(3) of the Internal Revenue Code of 1954, if no
26 part of the gross receipts derived from such activity inured to the
27 benefit of any private shareholder, member, or employee of such orga-
28 nization except as compensation for actual expenses incurred in con-
29 ducting such activity.

30 “(c) PRESUMPTION.—Proof that five or more persons participate in
31 all or part of a gambling business or another inter-related business,
32 both businesses taken together, and that such business or businesses
33 operate for two or more successive days gives rise to a presumption
34 that the business or businesses receive gross receipts in excess of \$2,000
35 in any single day for the purpose of establishing probable cause.

1 “(d) GRADING.—The offense is a Class D felony.

2 “(e) COMPOUND GRADING.—The offense is:

3 “(1) a Class A felony if any of the following additional of-
4 fenses is committed: murder or aggravated kidnapping;

5 “(2) a Class B felony if any of the following additional of-
6 fenses is committed: maiming, aggravated arson, or aggravated
7 malicious mischief; or

8 “(3) a Class C felony if any of the following additional of-
9 fenses is committed: bribery or extortion.

10 “(f) DEFINITIONS.—As used in this section:

11 “(1) ‘gambling’ includes pool-selling, bookmaking, lay off
12 or re-insurance bookmaking, maintaining slot machines, roulette
13 wheels, or dice tables, conducting lotteries, policy, bolita, or num-
14 bers games, or selling chances in such games;

15 “(2) ‘participates’ means works in, conducts, finances, man-
16 ages, supervises, directs, or owns in whole or in part.

17 “(g) JURISDICTION.—Federal jurisdiction exists when the offense is
18 committed anywhere under the powers of Congress to regulate com-
19 merce and under the findings of Congress expressed in Public Law
20 91-452.

21 **“§ 2-9F2. Protecting State Antigambling Policies**

22 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
23 carries or sends a gambling device or transmits gambling information
24 into a state from any place outside such state.

25 “(b) DEFENSES.—It is a defense that:

26 “(1) the gambling device was carried or sent into a state, or
27 any part of such state, where such gambling was legal, or was en-
28 route to such place;

29 “(2) the carriage was made in the usual course of business by
30 a common or public contract carrier;

31 “(3) the device was a newspaper or similar publication;

32 “(4) the device was a ticket or other embodiment of the claim
33 of a player or bettor which was carried or sent by him; or

34 “(5) the transmission of the gambling information was made in
35 connection with news reporting or the transmission was from a
36 state where such gambling is legal into a state where such
37 gambling is legal.

38 “(c) DISCONTINUANCE OF FACILITIES.—When any common carrier,
39 subject to the jurisdiction of the Federal Communications Commis-
40 sion, is notified in writing by a Federal, state, or local law enforce-

ment agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, state or local law, such common carrier shall discontinue or refuse to lease, furnish, or maintain such facility, after reasonable notice to the subscriber. No damages, penalty, or forfeiture, civil or criminal, shall be found against any common carrier for an act done in compliance with a notice received from such law enforcement agency.

“(d) GRADING.—The offense is a Class D felony.

“(e) DEFINITION.—As used in this section:

“(1) ‘gambling device’ means:

“(i) any device covered, in fact, by section 1171, title 15, United States Code, and not excluded by subsections (2) and (3) of section 1178, title 15, United States Code; or

“(ii) any record, paraphernalia, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, bolita, or similar games; and

“(2) ‘gambling information’ means information consisting of, or assisting in, the placing of bets or wagers.

“(f) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(12) (commerce jurisdiction).

“§ 2-9F3. Illegal Prostitution Business

“(a) OFFENSE.—A person is guilty of an offense if he participates in a prostitution business which:

“(1) is conducted, in fact, in violation of the law of the state or political subdivision in which it is conducted; and

“(2) involves five or more persons who participate in all or a part of such business.

“(b) GRADING.—The offense is a Class D felony.

“(c) COMPOUND GRADING.—The offense is:

“(1) a Class A felony if any of the following additional offenses is committed: murder, rape, or aggravated kidnapping;

“(2) a Class B felony if any of the following additional offenses is committed: maiming, aggravated arson, or aggravated malicious mischief; or

“(3) a Class C felony if any of the following additional offenses is committed: bribery or extortion.

1 “(d) DEFINITION.—As used in this section, ‘participates’ means
2 works in, conducts, finances, manages, supervises, directs, or owns in
3 whole or in part.

4 “(e) JURISDICTION.—Federal jurisdiction exists when the offense is
5 committed within the jurisdiction defined in section 1-1A4(64) (spe-
6 cial jurisdiction) ; section 1-1A4(12) (commerce jurisdiction) ; section
7 1-1A4(69) (mails jurisdiction) ; or section 1-1A4(3) (affects com-
8 merce jurisdiction).

9 **“§ 2-9F4. Protecting State Antiprostitution Policies**

10 “(a) OFFENSE.—A person is guilty of an offense is he knowingly
11 enters a state from any place outside such state in order to engage in
12 prostitution, or knowingly carries, sends, or facilitates the transporta-
13 tion of a prostitute into a state from any place outside such state.

14 “(b) DEFENSE.—It is a defense that the person entered or was car-
15 ried, sent, or transported into a state, or any part of such state, where
16 such prostitution was legal, or was en route to such place.

17 “(c) GRADING.—The offense is a Class D felony.

18 “(d) JURISDICTION.—Federal jurisdiction exists when the offense is
19 committed within the jurisdiction defined in section 1-1A4(12) (com-
20 merce jurisdiction).

21 **“§ 2-9F5. Disseminating Obscene Material**

22 “(a) OFFENSE.—A person is guilty of an offense if he traffics in or
23 disseminates obscene material or an obscene item.

24 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense that the
25 trafficking or dissemination was restricted to institutions or persons
26 having scientific, educational, governmental, or similar justification for
27 possession of such material or item.

28 “(c) STANDARDS.—The elements of ‘dominant theme’, ‘appeal to a
29 shameful or morbid interest’, and ‘candor permissible’ shall be judged
30 by standards generally accepted in the judicial district in which the
31 material was or was to be trafficked in or disseminated. The manner
32 of dissemination may be considered, where relevant, in determining
33 how to characterize the material or item.

34 “(d) GRADING.—The offense is a Class D felony.

35 “(e) DEFINITIONS.—As used in this section :

36 “(1) ‘disseminate’ means advertise, broadcast, or exhibit ;

37 “(2) material or an item shall be characterized as ‘obscene’ if,
38 taken as a whole, it :

“(i) has as its dominant theme an appeal to a shameful or morbid interest of an average person in sex, nudity, sado-masochistic, violent behavior, or scatological matters or materials or, in the case of material as to which the trafficking or dissemination was made or to be made to a member of a special class to the interest of the members of such class in sex, nudity, sadomasochistic, violent behavior, or scatological matters or materials; and

“(ii) exceeds the candor permissible in description or representation of matters of sex, nudity, sadomasochistic, violent behavior, or scatological matters or materials.

“(f) JURISDICTION.—Federal jurisdiction exists when the offense is committed within the jurisdiction defined in section 1-1A4(64) (special jurisdiction); section 1-1A4(69) (mails jurisdiction); or section 1-1A4(12) (commerce jurisdiction).

“Subchapter G.—Other Offenses

“Sec.
“2-9G1. Misuse of American Flag.

“§ 2-9G1. Misuse of American Flag

“(a) OFFENSE.—A person is guilty of an offense if he:

“(1) knowingly mutilates or defiles any flag of the United States; or

“(2) intentionally places any unauthorized inscription or other thing upon any flag of the United States or knowingly exhibits a flag so inscribed.

“(b) GRADING.—The offense is a violation.

“(c) DEFINITION.—As used in this section, ‘flag of the United States’ includes a standard, colors, ensign, or other flag, a picture or other representation, or a part or parts of such flag or representation, which purports to be the flag of the United States of America, or a representation of such flag which the average person may believe to represent the standard, colors, ensign, or other flag of the United States of America.

“(d) JURISDICTION.—Federal jurisdiction exists when the offense is committed.

“PART III.—ADMINISTRATION

“CHAPTER	Sec.
“10. LAW ENFORCEMENT.....	3-10A1
“11. COURTS.....	3-11A1
“12. CORRECTIONS.....	3-12A1
“13. MISCELLANEOUS.....	3-14A1

1 **“Chapter 10.—LAW ENFORCEMENT**

“Subchapter

“A. General Provisions.

“B. Government Agencies.

“C. Interception of Communications.

“D. Immunity of Witnesses.

“E. Rendition.

“F. Extradition.

2 **“Subchapter A.—General Provisions**

“Sec.

“3-10A1. Obligations of the Attorney General.

“3-10A2. Rewards and Appropriations for Rewards.

“3-10A3. Conviction Records.

“3-10A4. Collection of Fines.

“3-10A5. Interned Belligerent Nationals.

“3-10A6. Protected Facilities.

3 **“§ 3-10A1. Obligations of the Attorney General**

4 “(a) **GENERAL.**—The Attorney General is authorized and directed
5 to prepare, cause to be published, and periodically to revise adminis-
6 trative regulations binding all Federal public servants on:

7 “(1) the exercise of criminal investigative authority by Federal
8 law enforcement agencies; and

9 “(2) the exercise of criminal prosecutive discretion by attorneys
10 for the government.

11 “The Attorney General shall consult with other appropriate Fed-
12 eral agencies and representatives of the states and political subdivi-
13 sions of the states in the preparation of the regulations required by this
14 section.

15 “(b) **EXCLUSIVE JURISDICTION.**—The assertion of exclusive Federal
16 investigative or prosecutive jurisdiction by the Attorney General sus-
17 pends the exercise of jurisdiction by states or political subdivisions of
18 the states until Federal action is terminated if:

19 “(1) the victim of the offense is a high public servant; and

20 “(2) the offense is defined in one of the following sections:

21 “2-7B1 (Murder);

22 “2-7C1 (Maiming);

23 “2-7C2 (Aggravated Assault);

24 “2-7C3 (Assault);

25 “2-7D1 (Aggravated Kidnapping);

26 “2-7D2 (Kidnapping);

27 “2-7D4 (Skyjacking);

28 “2-7D5 (Mutiny or Commandeering);

29 “2-9C3 (Extortion).

30 “Notwithstanding any statute, rule, regulation, or order to the con-
31 trary, assistance in the conduct of such investigation may be requested

1 by and furnished to the Attorney General by any Federal, state or
2 local government agency, including the armed services.

3 “(c) INDEPENDENT COMMISSIONS OR AGENCIES PRECLUDED.—The pro-
4 visions of section (a) (1) are inapplicable to the exercise of criminal
5 investigative authority conferred by statute on any independent com-
6 mission or agency.

7 “(d) JUDICIAL REVIEW PRECLUDED.—The administrative regula-
8 tions issued under this section shall not be subject to judicial review.

9 **“§ 3-10A2. Rewards and Appropriations for Rewards**

10 “(a) GENERAL.—There is authorized to be appropriated, out of any
11 money in the Treasury not otherwise appropriated, an amount not
12 to exceed \$100,000 as a reward or rewards for the capture of any
13 person charged with violation of a Federal or state criminal law,
14 and an equal amount as a reward or rewards for information leading
15 to the arrest of such person. Such sums shall be expended in the
16 discretion of, and upon conditions imposed by, the Attorney General.
17 Except as otherwise provided, no more than \$100,000 shall be expended
18 as a reward or rewards for the capture or information leading to the
19 arrest of any one person. If person entitled to such reward shall be
20 killed, the Attorney General may, in his discretion, pay all or part of
21 the reward or rewards to the person or persons whom he shall adjudge
22 to be entitled to such reward money. In no event shall any reward
23 money be paid to an official or employee of the Department of Justice.

24 “(b) HIGH PUBLIC SERVANT.—The Attorney General, in his dis-
25 cretion, is authorized to pay an amount not to exceed \$250,000 for
26 information and services concerning an offense involving the killing,
27 kidnapping, attempt to kill or kidnap, or conspiracy to kill or kidnap
28 the President of the United States or other high public servant.
29 An officer or employee of the United States or of a state or local gov-
30 ernment who furnishes such information or provides such services in
31 the performance of his official duties shall not be eligible for payment
32 under this subsection.

33 **“§ 3-10A3. Conviction Records**

34 “(a) GENERAL.—The Attorney General is authorized to establish
35 and maintain in the Department of Justice a repository for records of
36 convictions and determinations of the validity of such convictions.

37 “(b) PROCEDURE.—Upon the conviction of an offender in a court of
38 the United States, the District of Columbia, the Commonwealth of
39 Puerto Rico, a territory or possession of the United States, or a polit-
40 ical subdivision, department, agency, or instrumentality of the United

1 States for an offense punishable in such court by imprisonment in
2 excess of one year, or upon a judicial determination of the validity of
3 such conviction on collateral review, the court shall cause a certified
4 record of the conviction or determination to be made and sent to the
5 repository in such form and containing such information as the Attor-
6 ney General shall by regulation prescribe.

7 “(c) AVAILABILITY AND USE.—Records maintained in the repository
8 shall not be public records. Certified copies of such records:

9 “(1) may be furnished for law enforcement purposes on request
10 of a court or a law enforcement or corrections officer of the United
11 States, the District of Columbia, the Commonwealth of Puerto
12 Rico, a territory or possession of the United States, or a political
13 subdivision, department, agency, or instrumentality of the United
14 States;

15 “(2) may be furnished for law enforcement purposes on request
16 of a court or a law enforcement or corrections officer of a state, a
17 political subdivision of a state, or a department, agency, or instru-
18 mentality of such state or political subdivision, if a statute of such
19 state requires that, upon the conviction of a defendant in a court
20 of such state or a political subdivision of such state for an offense
21 punishable in such court by imprisonment in excess of one year,
22 or upon a judicial determination of the validity of such convic-
23 tion on collateral review, the court shall cause a certified record
24 of the conviction or determination to be made and sent to the
25 repository in such form and containing such information as the
26 Attorney General shall by regulation prescribe;

27 “(3) shall be prima facie evidence in any court of the United
28 States, the District of Columbia, the Commonwealth of Puerto
29 Rico, a territory or possession of the United States, or a political
30 subdivision, department, agency, or instrumentality of the United
31 States that the conviction or convictions occurred and that on
32 collateral review such conviction or convictions were judicially
33 determined to be valid or invalid.

34 “(d) NOTICE OF REGULATIONS.—The Attorney General shall give
35 reasonable public notice, and afford to interested parties opportunity
36 for hearing, prior to prescribing regulations under this section.

37 **“§ 3-10A4. Collection of Fines**

38 “(a) TIME AND METHOD OF PAYMENT.—Except as otherwise ordered
39 by the court which imposes sentence under section 1-4C1 (Fines), pay-

1 ment of fines shall be made in lump sum or periodically. Fines or
2 criminal penalties imposed by a court of the United States, if not paid
3 upon imposition, shall be paid to the Secretary of the Treasury or his
4 delegate, who shall be responsible for collection and enforcement. In
5 the case of fines or criminal penalties imposed by the District Court of
6 Guam or the District Court of the Virgin Islands, the term 'the Secre-
7 tary of the Treasury or his delegate', whenever used in this section or
8 in any provision to which this section refers, shall be read as 'the
9 Governor or his delegate.'

10 "(b) CERTIFICATION.—With respect to any fine or criminal penalty
11 imposed and not paid in full upon imposition, the court which imposes
12 sentence shall promptly certify to the Secretary of the Treasury or his
13 delegate the name of the offender, his last known address, his identi-
14 fying number (as prescribed by section 6109, title 26, United States
15 Code, and regulations under such section), the docket number of the
16 case, the unpaid amount of the fine or penalty, and the terms of pay-
17 ment prescribed by the court. The court shall further promptly certify
18 to the Secretary of the Treasury or his delegate any remission or modi-
19 fication of such fine or penalty, and shall transmit to him any payments
20 which the court may receive with respect to fines and penalties previ-
21 ously certified.

22 "(c) LIEN.—Such fine or penalty, together with costs, shall be a lien
23 in favor of the United States upon all property and rights to property,
24 whether real or personal, belonging to the offender. The lien shall arise
25 at the time of entry of the judgment and shall continue until the lia-
26 bility is satisfied, remitted or set aside, or until it becomes unenforce-
27 able by reason of subsection (d).

28 "(d) EXPIRATION.—Such liability shall not be collected after the
29 expiration of 20 years from the imposition of sentence, unless under
30 a levy made or judicial proceeding begun within that time. The period
31 for collection may be extended by agreement in writing entered into
32 by the offender and the Secretary or his delegate prior to the expiration
33 of the period. The running of such period shall be suspended during
34 any interval for which the running of the period of limitations for col-
35 lection of a tax would be suspended under subsections (b), (c) or (g)
36 of section 6503, title 26, United States Code, under subsection (a) (1)
37 (I) of section 7508, title 26, United States Code, or under section 513
38 of the Act of October 17, 1940, c. 888, 54 Stat. 1190. A liability for a
39 fine shall in no event be collected after the death of the offender, if a
40 human being.

1 “(e) OTHER PROVISIONS.—The provisions of sections 6302, 6303
2 (a), 6311, 6312, 6314(a), 6316, 6323, 6325, 6331 through 6343, 6401(a),
3 6402(a), 6403, 6873, 7210, 7401 through 7403, 7405, 7423 through 7426,
4 7505(a), 7506, 7508, 7602 through 7605, 7622, 7701, 7805, 7808 through
5 7810, title 26, United States Code, and of section 513 of the Act of
6 October 17, 1940 c. 888, 54 Stat. 1190, shall apply to such fine or penalty
7 and to the lien imposed by subsection (c) as if the liability of the
8 offender were one for an internal revenue tax assessment, except to the
9 extent that their application is modified by the Secretary of the Treas-
10 ury or his delegate by regulations necessary or appropriate to reflect
11 differences in the nature of the liabilities.

12 “(f) EFFECT OF NOTICE.—A notice of the lien imposed by subsection
13 (c) shall be considered a notice of lien for taxes payable to the United
14 States for the purpose of any state law providing for the filing of
15 notices of such tax liens. If the Secretary of the Treasury or his dele-
16 gate shall proclaim that the responsible authorities in any state or
17 political subdivision of such state in which notices of Federal tax liens
18 are required to be filed have determined notices of the lien imposed by
19 subsection (c) to be unacceptable for filing as Federal tax liens, the
20 registration, recording, docketing or indexing of the judgment for
21 the fine or penalty in accordance with section 1962, title 28, United
22 States Code, shall be considered for all purposes as the filing pre-
23 scribed by section 6323, title 26, United States Code (f) (1) (A) and
24 this section.

25 “(g) REPORTS.—All moneys recovered under this section shall be
26 accounted for as collections of fines and penalties, and shall be prompt-
27 ly reported by the Secretary or his delegate to the Attorney General
28 and to the Administrative Office of the United States Courts. With
29 respect to each liability for a fine or penalty, the payment of which has
30 become delinquent, the Secretary of the Treasury or his delegate shall
31 make reports to the Attorney General and to the court which imposed
32 sentence, at monthly intervals, or more often if requested in a par-
33 ticular case, setting out the name and last known address of the of-
34 fender, the docket number of the case, the amount which is delinquent,
35 the period for which it has been delinquent, the levies which have
36 been made or attempted, the notices of lien which has been filed, and
37 any information in the possession of the Secretary or his delegate
38 which may bear upon the appropriate response to nonpayment under
39 section 1-4C2 (Response to Non-payment of Fine), except so far as

1 such information has been previously reported and has not changed
2 materially.

3 **“§ 3-10A5. Interned Belligerent Nationals**

4 “A person who belongs to the armed land or naval forces of a bel-
5 ligious nation or belligerent faction and who is interned in the
6 United States according to the law of nations shall be arrested if he:

7 “(a) leaves or attempts to leave the United States;

8 “(b) leaves or attempts to leave the limits of internment with-
9 out permission from the Federal public servant in charge;

10 “(c) recklessly overstays a leave of absence granted by the
11 Federal public servant in charge.

12 “Such arrest may be effected by the military or naval authorities of
13 the United States or by any Federal marshal or deputy marshal. Upon
14 arrest, he shall be returned to the place of internment and there con-
15 fined for such period of time as the Federal public servant in charge
16 shall, in his discretion, determine.

17 **“§ 3-10A6. Protected Facilities**

18 “The Attorney General is authorized to provide for the security
19 of witnesses, potential witnesses, and the families of witnesses and
20 potential witnesses in legal or other proceedings involving organized
21 or other alleged criminal activity. The Attorney General is authorized
22 to rent, purchase, modify, or remodel protected housing facilities and
23 to otherwise offer to provide for the health, safety, and welfare of
24 witnesses and persons intended to be called as witnesses and their
25 families whenever, in his judgment, testimony from, or a willingness
26 to testify by, such a witness would place his life or person, or the life
27 or person of a member of his family or household, in jeopardy. Any
28 person availing himself of an offer by the Attorney General to use
29 such facilities may continue to do so, so long as the Attorney General
30 determines that his life or person is in jeopardy. The offer of facilities
31 to such persons may be conditioned by the Attorney General upon
32 reimbursement in whole or in part to the United States by a state, a
33 political subdivision of a state, or any department, agency, or instru-
34 mentality of such state or political subdivision of the cost of maintain-
35 ing and protecting such persons.

36 **“Subchapter B.—Government Agencies**

“Sec.

“3-10B1. Federal Bureau of Investigation.

“3-10B2. United States Marshals.

“3-10B3. Secret Service.

“3-10B4. Postal Service.

“3-10B5. Federal Probation Service.

“3-10B6. Bureau of Corrections.

1 **“§ 3-10B1. Federal Bureau of Investigation**

2 “The Director, Associate Director, Assistant to the Director, Assist-
3 ant Directors, inspectors, and agents of the Federal Bureau of Investi-
4 gation of the Department of Justice may :

5 “(a) carry firearms;

6 “(b) execute orders or other process issued under the authority
7 of the United States for arrest, search and seizure, or the produc-
8 tion of evidence;

9 “(c) make arrests without warrant for any offense against the
10 United States committed in their presence or for any crime cog-
11 nizable under Federal law if they have reasonable grounds to
12 believe that the person to be arrested has committed or is com-
13 mitting such crime; and

14 “(d) offer and pay rewards for services or information looking
15 toward the apprehension of criminals.

16 **“§ 3-10B2. United States Marshals**

17 “(a) **AUTHORITY.**—United States marshals and their deputies may :

18 “(1) carry firearms;

19 “(2) execute orders or other process issued under the authority
20 of the United States for arrest, search and seizure, or the pro-
21 duction of evidence;

22 “(3) make arrests without warrant for any offense against
23 the United States committed in their presence or for any felony
24 cognizable under Federal law if they have reasonable grounds
25 to believe that the person to be arrested has committed or is
26 committing such felony; and

27 “(4) offer and pay rewards for services or information looking
28 toward the apprehension of criminals.

29 “(b) **TEMPORARY SAFE-KEEPING.**—United States Marshals and their
30 deputies shall provide for the safe-keeping of a person :

31 “(1) arrested;

32 “(2) held under authority of any enactment of Congress,
33 pending commitment to a correctional facility;

34 “(3) removed from a Federal correctional facility under an
35 order or writ issuing from a court of competent jurisdiction; or

36 “(4) held under an order of transfer to a community facility
37 for care and treatment.

38 “(c) **EXPENSE.**—The Attorney General shall allow and pay the
39 reasonable and actual cost of sustenance of persons in the official de-

1 tention of a United States marshal or his deputy, under regulations
2 prescribed by him for the governance of marshals.

3 **“§ 3-10B3. Secret Service**

4 “(a) **AUTHORITY.**—Agents of the United States Secret Service may :

5 “(1) carry firearms;

6 “(2) execute orders or other process issued under the authority
7 of the United States for arrest, search and seizure, or the pro-
8 duction of evidence;

9 “(3) make arrests without warrant for any offense against
10 the United States committed in their presence or for any crime
11 cognizable under federal law if they have reasonable grounds to
12 believe that the person to be arrested has committed or is com-
13 mitting such crime; and

14 “(4) offer and pay rewards for services or information looking
15 toward the apprehension of criminals.

16 “(b) **PROTECTION OF PERSONS.**—Subject to the direction of the
17 Secretary of the Treasury, the United States Secret Service shall
18 protect the person of:

19 “(1) the President of the United States and the members of
20 his immediate family;

21 “(2) the President-elect;

22 “(3) the Vice President or other officer next in the order of
23 succession to the office of President;

24 “(4) the Vice President-elect;

25 “(5) a former President and his wife during his lifetime;

26 “(6) the widow of a former President until her death or
27 remarriage; and

28 “(7) minor children of a former President until they reach 16
29 years of age, unless such protection is declined; and

30 shall perform such other functions and duties as are authorized or
31 directed by a Federal statute or a rule, regulation, or order issued under
32 such statute.

33 “(c) **MONEYS RECOVERED.**—Moneys expended from Secret Service
34 appropriations for the purchase of counterfeits and subsequently re-
35 covered shall be deposited in the Treasury to the credit of the appro-
36 priations at the time such recovery is made.

37 **“§ 3-10B4. Postal Service**

38 “Officers and employees of the United States Postal Service who are
39 performing duties related to the inspection of postal matters may, to
40 the extent authorized by the Board of Governors and in the enforce-

ment of laws regarding Federal property in the custody of the Postal Service, including property of the Postal Service, the use of the mails, and other such offenses:

“(a) carry firearms;

“(b) execute orders or other process issued under the authority of the United States for arrest, search and seizure, or the production of evidence;

“(c) make arrests without warrant for any offense against the United States committed in their presence or for any crime cognizable under Federal law if they have reasonable grounds to believe that the person to be arrested has committed or is committing such crime; and

“(d) offer and pay rewards for services or information looking toward the apprehension of criminals.

“§ 3-10B5. Federal Probation Service

“Officers of the Federal Probation Service may, for cause, make arrests without warrant of any probationer or parolee wherever found.

“§ 3-10B6. Bureau of Corrections

“(a) GENERAL.—An officer or employee of the Bureau of Corrections of the Department of Justice may make arrests without warrant for violations of any of the provisions of sections 2-6B5 (Escape) or 2-6B6 (Contrabands), if he has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of his escaping before a warrant can be obtained for his arrest. If the arrested person is a fugitive from official detention, he shall be returned to such official detention. Officers and employees of the Bureau of Corrections and the Parole Commission may carry firearms under such rules and regulations as the Attorney General may prescribe.

“(b) OATHS AND ACKNOWLEDGMENTS.—The chief executive officers of Federal correctional facilities and those members of the staff whom they designate may administer oaths to and take acknowledgments of officers, employees, and inmates of such facilities, but shall not demand or accept any fee or compensation for such service.

“Subchapter C.—Interception of Communications

“Sec.

“3-10C1. Definition of Terms.

“3-10C2. Authorization for Interception of Private Communication.

“3-10C3. Procedure for Interception of Private Communication.

“3-10C4. Reports Concerning Intercepted Private Oral Communication.

“3-10C5. Intercepted Private Communication.

1 **“§ 3-10C1. Definition of Terms**

2 “As used in this subchapter, unless it is otherwise provided or a
3 different meaning plainly is required :

4 “(1) ‘aggrieved person’ means a person who was a party to an
5 intercepted private communication or a person against whom an
6 interception was directed;

7 “(2) ‘communications common carrier’ has the meaning pre-
8 scribed for the term ‘common carrier’ in section 153(h), title 47,
9 United States Code;

10 “(3) ‘contents’, when used with respect to private communica-
11 tion, includes any information, obtained from the communication
12 itself, concerning the identity of the parties to such communica-
13 tion or the existence or meaning of such communication;

14 “(4) ‘court of competent jurisdiction’ means:

15 “(i) a United States district court or a United States court
16 of appeals; or

17 “(ii) a judge of a state court of general criminal jurisdic-
18 tion who is authorized by a statute of that state to enter an
19 order authorizing interception of a private communication;

20 “(5) ‘intercept’ means the aural acquisition of the contents of
21 a private communication;

22 “(6) ‘eavesdropping device’ means any electronic, mechanical,
23 or other device or apparatus which can be used to intercept a
24 private communication;

25 “(7) ‘investigative or law enforcement officer’ means any Fed-
26 eral public servant or any public servant of a state or political
27 subdivision of a state who is empowered by law to conduct investi-
28 gations of or to make arrests for offenses designated in section
29 3-10C2, (Authoriaztion for Interception of Communication), or
30 any attorney authorized by law to prosecute or participate in the
31 prosecution of such offenses; and

32 “(8) ‘private communication’ means an oral communication
33 uttered by a person who exhibits an expectation that such com-
34 munication is not subject to overhearing, under circumstances
35 justifying such expectation.

36 **“§ 3-10C2. Authorization for Interception of Private Communi-**
37 **cation**

38 “(a) FEDERAL.—The Attorney General may authorize an application
39 to a court of competent jurisdiction for an order authorizing or ap-
40 proving the interception of a private communication. Such court shall

grant such an application in accordance with the provisions of section 3-10C3 (Procedure in Interception of Private Communications). Such application and order shall authorize or approve an interception by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of violation of :

“(1) one or more of the following sections :

“2-5B1 (Treason) ;

“2-5B2 (Military Activity Against the United States) ;

“2-5B3 (Armed Insurrection) ;

“2-5B4 (Sabotage) ;

“2-5B7 (Espionage) ;

“2-6B2 (Preventing Arrest, Search, or Discharge of Other Duties) ;

“2-6B3 (Hindering Law Enforcement) ;

“2-6B4 (Bail Jumping) ;

“2-6B5 (Escape) ;

“2-6C1 (Obstruction of Justice) ;

“2-6E1 (Bribery) ;

“2-6E2 (Graft) ;

“2-G3 (Trafficking in Taxable Object) ;

“2-6G4 (Smuggling) ;

“2-7B1 (Murder) ;

“2-7C1 (Maiming) ;

“2-7C2 (Aggravated Assault) ;

“2-7D1 (Aggravated Kidnapping) ;

“2-7D4 (Skyjacking) ;

“2-7D5 (Mutiny or Commandeering) ;

“2-8B1 (Aggravated Arson) ;

“2-8C1 (Armed Burglary) ;

“2-8D1 (Armed Robbery) ;

“2-8D3 (Theft) where such offense is felonious ;

“2-8D4 (Receiving Stolen Property) ;

“2-8D5 (Scheme to Defraud) ;

“2-8E1 (Counterfeiting) ;

“2-8E2 (Forgery) ;

“2-8E4 (Trafficking in Specious Securities) ;

“2-8F1 (Bankruptcy Fraud) ;

“2-8F2 (Commercial Bribery) ;

- 1 "2-8F5 (Securities Violations) ;
- 2 "2-9B1 (Inciting Riot) ;
- 3 "2-9B2 (Arming Rioters) ;
- 4 "2-9B3 (Engaging in a Riot) ;
- 5 "2-9C1 (Racketeering Activity) ;
- 6 "2-9C2 (Loansharking) ;
- 7 "2-9C3 (Extortion) ;
- 8 "2-9D1 (Para-Military Activities) ;
- 9 "2-9D3 (Illegal Firearms, Ammunition, or Explosive Ma-
- 10 terials Business) ;
- 11 "2-9D4 (Trafficking in an Receiving Limited-Use Fire-
- 12 arms) ;
- 13 "2-9E1 (Drug Trafficking or Possession) ;
- 14 "2-9F1 (Illegal Gambling Business) ;
- 15 "2-9F2 (Protecting State Antigambling Policies) ;
- 16 "2-9F3 (Illegal Prostitution Business) ;
- 17 "2-9F4 (Protecting State Antiprostitution Policies) ;
- 18 "(2) section 186, title 29, United States Code (relating to pay-
- 19 ments between employer and representatives) ;
- 20 "(3) sections 2274 through 2277, title 42, United States Code
- 21 (relating to enforcement of the Atomic Energy Act of 1954).
- 22 "(b) STATE.—The principal prosecuting attorney of a state, or
- 23 the principal prosecuting attorney of a political subdivision of a
- 24 state, if authorized by a statute of that state, may apply to a state court
- 25 of competent jurisdiction for an order authorizing or approving the
- 26 interception of a private communication. Such court may grant such
- 27 an application if it is in substantial conformity with the general stand-
- 28 ards of section 3-10C3 (Procedure for Interception of Private Com-
- 29 munication) and in conformity with the applicable state statute. Such
- 30 application and order shall authorize or approve an interception by
- 31 investigative or law enforcement officers having responsibility for the
- 32 investigation of the offense as to which the application is made, when
- 33 such interception may provide or has provided evidence of the com-
- 34 mission of the offense of:
- 35 "(1) murder ;
- 36 "(2) kidnapping ;
- 37 "(3) gambling ;
- 38 "(4) robbery ;
- 39 "(5) bribery ;
- 40 "(6) extortion ;

1 “(7) dealing in dangerous, abusable, or restricted drugs;

2 “(8) any offense:

3 “(i) which is dangerous to life, limb, or property;

4 “(ii) which is punishable by imprisonment for more than
5 one year; and

6 “(iii) which is designated in any applicable state statute
7 authorizing such interception; or

8 “(9) any conspiracy to commit any such offense.

9 **“§ 3-10C3. Procedure for Interception of Private Communication**

10 “(a) APPLICATION.—Each application for an order or an extension
11 of an order authorizing or approving the interception of a private
12 communication shall be made in writing upon oath to a court of
13 competent jurisdiction and shall state the applicant’s authority to
14 make such application. Each application shall include the following
15 information:

16 “(1) the identity of the investigative or law enforcement officer
17 making the application and of the officer authorizing the applica-
18 tion;

19 “(2) a complete statement of the facts relied upon by the appli-
20 cant to justify his belief that an order should be issued, including:

21 “(i) details as to the particular offense that has been, is
22 being, or is about to be committed;

23 “(ii) a particular description of the character and location
24 of the facilities from which or the place where the communi-
25 cation is to be intercepted;

26 “(iii) a description, with particularity, of the type of com-
27 munication sought to be intercepted;

28 “(iv) the identity of the person, if known, committing the
29 offense and whose communication is to be intercepted;

30 “(3) a complete statement as to whether or not other investiga-
31 tive procedures have been tried and failed or why they reasonably
32 appear to be unlikely to succeed if tried or to be too dangerous;

33 “(4) a statement of the period of time for which the inter-
34 ception is required to be maintained. If the character of the in-
35 vestigation is such that the authorization for interception should
36 not automatically terminate when the described type of communi-
37 cation has been first obtained, a description, with particularity, of
38 facts establishing probable cause to believe that an additional
39 communication of the same type will occur at a later time;

1 “(5) a complete statement of the facts concerning all previous
2 applications known to the person authorizing and making the
3 application, made to any court, for authorization to intercept, or
4 for approval of interceptions, of private communications involv-
5 ing any of the same persons, facilities, or places specified in the
6 application, and the action taken by the court on each such
7 application; and

8 “(6) if the application is for the extension of an order, a
9 statement setting forth the results thus far obtained from the
10 interception, or a reasonable explanation of the failure to obtain
11 such results.

12 “(b) ADDITIONAL EVIDENCE.—Such Court may require the applicant
13 to furnish additional testimony or documentary evidence in support of
14 the application.

15 “(c) JUDICIAL FINDING.—Upon such application, such court may en-
16 ter an ex parte order, as requested or as modified, authorizing or ap-
17 proving interception of a private communication within the territorial
18 jurisdiction of such court if such court determines on the basis of the
19 facts submitted by the applicant that:

20 “(1) there is probable cause for belief that a person is com-
21 mitting, has committed, or is about to commit a particular of-
22 fense designated in section 3-10C2 (Authorization for Intercep-
23 tion of Private Communication);

24 “(2) there is probable cause for belief that a particular com-
25 munication concerning that offense will be obtained through such
26 interception;

27 “(3) normal investigative procedures have been tried and have
28 failed or reasonably appear to be unlikely to succeed if tried or to
29 be too dangerous; and

30 “(4) there is probable cause for belief that the facilities from
31 which, or the place where, the private communication is to be
32 intercepted are being used, or are about to be used, in connection
33 with the commission of such offense, or are leased to, listed in the
34 name of, or commonly used by a person who is committing, or
35 has committed, or is about to commit such offense.

36 “(d) ORDER.—Each order authorizing or approving the intercep-
37 tion of private communication shall specify:

38 “(1) the identity of the person, if known, whose private com-
39 munication is to be intercepted;

1 “(2) the character and location of the communications facil-
2 ities as to which, or the place where, authority to intercept is
3 granted;

4 “(3) description, with particularity, of the type of communica-
5 tion sought to be intercepted, and a statement of the particular
6 offense to which it relates;

7 “(4) the identity of the agency authorized to intercept the
8 communication and of the person authorizing the application; and

9 “(5) the period of time during which such interception is au-
10 thorized, including a statement as to whether or not the intercep-
11 tion shall automatically terminate when the described communi-
12 cation has been first obtained.

13 “An order authorizing the interception of a private communication
14 shall, upon the request of the applicant, direct that a communications
15 common carrier, landlord, custodian, or other person shall furnish
16 the applicant forthwith all information, facilities, and technical assist-
17 ance necessary to accomplish the interception unobtrusively and with
18 a minimum of interference with the services that such carrier, landlord,
19 custodian, or person is affording the person whose private commu-
20 nication is to be intercepted. Any communications common carrier,
21 landlord, custodian, or other person furnishing such facilities or tech-
22 nical assistance shall be compensated for such aid by the applicant at
23 the prevailing rates.

24 “(e) PERIOD OF INTERCEPTION.—No order entered under this section
25 may authorize or approve the interception of private communica-
26 tion for any period longer than is necessary to achieve the purposes
27 of the authorization or thirty days, whichever is less. Extensions of
28 an order may be granted, but only upon application for an extension
29 of an order under subsection (a) and required judicial findings under
30 subsection (c). The period of extension shall be no longer than the
31 authorizing court deems necessary to achieve the purposes for which
32 it was granted, and in no event, for longer than thirty days. Each
33 order and extension of an order shall contain a provision that the
34 authorization to intercept shall be executed as soon as practicable,
35 shall be conducted in such a way as to minimize the interception of
36 communications not otherwise subject to interception under this sub-
37 chapter, and shall terminate upon attainment of the authorized ob-
38 jective or in thirty days, whichever is less;

39 “(f) PERIODIC REPORTS.—Whenever an order authorizing inter-
40 ception is entered under this section, the order may require reports to

1 be made to the court which issued the order showing what progress
2 has been made toward achievement of the authorized objective and the
3 need for continued interception. Such reports shall be made at such
4 intervals as the court may require.

5 “(g) UNRELATED INTERCEPTIONS.—When an investigative or law
6 enforcement officer, while engaged in intercepting private communi-
7 cations, in the manner authorized by law, intercepts a private com-
8 munication which relates to an offense other than an offense specified
9 in the order of authorization or approval, he shall, as soon as practi-
10 cable, make an application under subsection (a) to a court of compe-
11 tent jurisdiction for an order approving such interception. Such court
12 shall enter such an order if it finds that the communication was other-
13 wise intercepted in accordance with law.

14 “(h) EMERGENCY INTERCEPTION.—Notwithstanding any other pro-
15 vision of this subchapter, an investigative or law enforcement officer
16 may intercept a private communication without court order if:

17 “(1) he is specially designated by the Attorney General or by
18 the principal prosecuting attorney of a state or a political sub-
19 division of a state;

20 “(2) he reasonably determines that:

21 “(i) an emergency situation exists with respect to con-
22 spiratorial activities threatening national security interests
23 or conspiratorial activities characteristic of organized crime
24 and that such emergency situation requires a private com-
25 munication to be intercepted before an order authorizing
26 such interception can with due diligence be obtained; and

27 “(ii) there are grounds upon which an order could be
28 entered under this section or under a state statute to author-
29 ize such interception; and

30 “(3) an application for an order approving such interception
31 is made in accordance with this section as soon as practicable
32 but no later than 48 hours after the interception has occurred or
33 commenced.

34 “In the absence of an order, such interception shall immediately ter-
35 minate when the communication sought is obtained or when the
36 application for the order is denied, whichever is earlier. If such ap-
37 plication for approval is denied, or in any other case where the inter-
38 ception is terminated without an order having been issued, the contents
39 of any private communication intercepted shall be treated as having
40 been obtained in violation of law, and an inventory shall be served
41 under subsection (j) on the person named in the application.

1 “(i) CUSTODY OF APPLICATIONS AND ORDERS. (1) The contents of
2 any private communication intercepted by any means authorized by
3 law shall, if practicable, be recorded on tape, wire, or other com-
4 parable device. The recording of the contents of any private com-
5 munication intercepted under this subchapter shall be done in such way
6 as will protect the recording from editing or other alteration. As soon
7 as practicable, upon the expiration of the period of the order, or the
8 extensions of an order, such recordings shall be made available to the
9 court issuing such order and shall be sealed under its direction. Custody
10 of the recordings shall be wherever such court orders. Such record-
11 ings shall not be destroyed except upon an order of such court,
12 and in any event shall be kept for ten years. Duplicative record-
13 ings may be made for use or disclosure to the extent that such use or
14 disclosure is appropriate to the proper performance of official duties.

15 “(2) Applications made and orders granted under this section shall
16 be sealed by the issuing or denying court. Custody of the applications
17 and orders shall be wherever such court directs. Such applications and
18 orders shall be disclosed only upon a showing of good cause before such
19 a court and shall not be destroyed except upon an order of such court,
20 and in any event shall be kept for ten years.

21 “(3) Any violation of the provisions of this subsection may be
22 punished as contempt of the issuing or denying court.

23 “(j) INVENTORY.--(1) Within a reasonable time but not later than 90
24 days after the filing of an application, which is denied, for an order of
25 approval under subsection (h) or the termination of the period of an
26 order or the extension or extensions of an order, the issuing or denying
27 court shall cause an inventory to be served on the person or persons
28 named in the order or the application, and such on other persons who
29 are parties to intercepted private communications as such court may
30 determine to be in this interest of justice. Such inventory shall in-
31 clude notice of:

32 “(1) the fact of the entry of the order or the application;

33 “(2) the date of the entry and the period of authorized, ap-
34 proved, or disapproved interception, or the denial of the applica-
35 tion; and

36 “(3) the fact that during the period private communications
37 were or were not intercepted.

38 “(2) Such court, upon the filing of a motion by such person, may
39 make available to such person or his counsel for inspection such por-
40 tions of the contents of an intercepted communication or evidence

1 derived from such contents applications, and orders as the court deter-
2 mines to be in the interest of justice.

3 “(3) On an ex parte showing of good cause to such court, the serving
4 of the inventory required by this subsection may be postponed.

5 **“§ 3-10C4. Report Concerning Intercepted Communication**

6 “(a) JUDICIAL REPORTS.—Within thirty days after the expiration
7 of an order or each extension of such order entered under section
8 3-10C3 (Procedure for Interception of Private Communication) or
9 the denial of an order approving an interception or an extension, the
10 issuing or denying court shall report to the Administrative Office of
11 the United States Courts;

12 “(1) the fact that an order or extension was applied for;

13 “(2) the kind of order or extension applied for;

14 “(3) the fact that the order or extension was granted as ap-
15 plied for, was modified, or was denied;

16 “(4) the period of interception authorized by the order, and
17 the number and duration of any extensions of such order;

18 “(5) the offense specified in the order or application, or exten-
19 sion of an order;

20 “(6) the identity of the investigative or law enforcement of-
21 ficer and agency making the application and the person authoriz-
22 ing such application;

23 “(7) the nature of the facilities from which or the place where
24 private communications were to be intercepted; and

25 “(8) such other related information as the Administrative Of-
26 fice of the United States Courts shall by regulation require.

27 “(b) PROSECUTIVE REPORTS—In January of each year, the Attorney
28 General, or the principal prosecuting attorney of a state, or the prin-
29 cipal prosecuting attorney for political subdivision of a state, shall
30 repeat to the Administrative Office of the United States Courts:

31 “(1) the information required by subsection (a) with respect
32 to each application for an order or extension made during the
33 preceding calendar year;

34 “(2) a general description of the interceptions made under
35 such orders or extensions, including:

36 “(i) the approximate character and frequency of incrimi-
37 nating communications intercepted,

38 “(ii) the approximate character and frequency of other
39 communications intercepted,

“(iii) the approximate number of persons whose communications were intercepted, and

“(iv) the approximate character, amount, and cost of the manpower and other resources used in the interceptions;

“(3) the number of arrests resulting from interceptions made under such orders or extensions, and the offenses for which arrests were made;

“(4) the number of trials resulting from such interceptions;

“(5) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

“(6) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions;

“(7) the information required by paragraphs (2) through (6) of this subsection with respect to orders or extensions obtained in a preceding calendar year; and

“(8) such other related information as the Administrative Office of the United States Courts shall by regulation require.

“(c) SUMMARY REPORT.—In April of each year, the Director of the Administrative Office of the United States Courts shall transmit to the Congress a complete report concerning the number of applications made for orders authorizing or approving the interception of private communications and the number of such orders and extensions granted or denied during the preceding calendar year. The report shall include a summary and analysis of the data required to be filed with the Administrative Office under this section.

“(d) REGULATIONS.—The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required by this section to be filed with such office.

“§ 3-10C5. Intercepted Private Communication

“(a) DISCLOSURE AND USE.—(1) An investigative or law enforcement officer who has obtained knowledge of the contents of a private communication, or evidence derived from such contents, may disclose or use such contents to the extent that such disclosure is appropriate to the proper performance of his official duties.

“(2) Disclosure or use of the contents of a private communication or evidence derived from such contents may otherwise be made only on a showing of good cause before a court of competent jurisdiction.

“(b) SEAL.—The presence of the seal provided for by subsection

1 3-10C3(i) (Custody of Application and Orders), or a satisfactory
2 explanation for the absence of such seal, shall be a prerequisite to the
3 use or disclosure of the contents of any private communication or evi-
4 dence derived from such contents.

5 “(c) PRE-TRIAL NOTICE.— The contents of an intercepted private
6 communication or evidence derived from such contents shall not
7 be received in evidence or otherwise disclosed in any trial, hearing, or
8 other proceeding in any court unless each aggrieved person who is a
9 party in such trial, hearing, or proceeding, not less than ten days
10 before such trial, hearing, or proceeding, has been furnished with a
11 copy of the court order and accompanying application, under which
12 the interception was authorized or approved. This ten-day period may
13 be waived by the court if it finds that it was not possible to furnish
14 such person with such information ten days before the trial, hearing,
15 or proceeding and that such person will not be prejudiced by the
16 delay in receiving such information.

17 “(d) SUPPRESSION OF EVIDENCE.—(1) An aggrieved person who is
18 a party in a trial, hearing, or proceeding in or before any court, depart-
19 ment, officer, agency, regulatory body, or other authority of the United
20 States, a state, or a political subdivision of a state, may move to sup-
21 press the contents of an intercepted private communication or evidence
22 derived from such contents, on the ground that:

23 “(i) the communication was unlawfully intercepted;

24 “(ii) the order of authorization or approval under which it was
25 intercepted is insufficient on its face; or

26 “(iii) the interception was not made in conformity with the
27 order of authorization or approval.

28 “(2) Such motion shall be made before the trial, hearing, or proceed-
29 ing unless, there was no opportunity to make such motion or unless the
30 aggrieved person was not aware of the grounds on which suppression
31 could be ordered. If the motion is granted, the contents of the inter-
32 cepted private communication, or evidence derived from such contents,
33 shall be treated as having been obtained in violation of law.

34 “(3) A court of competent jurisdiction, upon the filing of such
35 motion by an aggrieved person, may make available to the aggrieved
36 person or his counsel for inspection such portions of the contents of
37 an intercepted private communication or communications or evidence
38 derived from such contents, as such court determines to be in the
39 interest of justice.

1 “(e) **PRIVILEGED COMMUNICATION.**—No otherwise privileged private
2 communication intercepted in accordance with, or in violation of, law
3 shall lose its privileged character.

4 “(f) **SOURCES OF EVIDENCE.**—In any trial, hearing, or other proceed-
5 ing in or before a court, grand jury, department, officer, agency, regula-
6 tory body, or other authority of the United States:

7 “(1) upon a claim by an aggrieved person who is a party or a
8 witness in such trial, hearing, or proceeding that evidence should
9 be treated as having been obtained in violation of law because
10 it is the primary product of unlawful conduct or because it was
11 obtained by the exploitation of unlawful conduct, the opponent
12 of the claim shall affirm or deny the occurrence of the alleged
13 unlawful conduct;

14 “(2) disclosure of any information for a determination if
15 evidence should be treated as having been obtained in violation of
16 law because it is the primary product of unlawful conduct occur-
17 ring prior to June 19, 1968, or because it was obtained by the
18 exploitation of unlawful conduct occurring prior to June 19, 1968,
19 shall not be required unless such information may be relevant to
20 a pending claim of such inadmissibility; and

21 “(3) no claim shall be considered that evidence of an event
22 should be treated as having been obtained in violation of law on
23 the ground that such evidence was obtained by the exploitation of
24 unlawful conduct if such event occurred more than five years after
25 such allegedly unlawful conduct.

26 For the purposes of this subsection, ‘unlawful conduct’ means any
27 act involving the use of an eavesdropping device in violation of law.

28 “(g) **CIVIL DAMAGES.**—A good faith reliance on a court order or
29 legislative authorization shall constitute a complete defense to any
30 civil action brought in any court for the unlawful interception of a
31 private communication.

32 **“Subchapter D.—Immunity of Witnesses**

“Sec.

“3-10D1. Definition of Terms.

“3-10D2. Immunity Generally.

“3-10D3. Court or Grand Jury Proceeding.

“3-10D4. Administrative Proceedings.

“3-10D5. Congressional Proceedings.

33 **“§ 3-10D1. Definition of Terms**

34 “As used in this subchapter, unless it is otherwise provided or a dif-
35 ferent meaning plainly is required:

“(1) ‘agency of the United States’ means an executive department, as defined in section 101, title 5, United States Code; a military department, as defined in section 102, title 5, United States Code; the Atomic Energy Commission; the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143); the Civil Aeronautics Board; the Federal Communications Commission; the Federal Deposit Insurance Corporation; the Federal Maritime Commission; the Federal Power Commission; the Federal Trade Commission; the Interstate Commerce Commission; the National Labor Relations Board; the National Transportation Safety Board; the Railroad Retirement Board; an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157); the Securities and Exchange Commission; or the Subversive Activities Control Board; or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

“(2) ‘other information’ includes any book, paper, document, record, recording, or other material;

“(3) ‘proceeding before an agency of the United States’ means proceeding with respect to which such an agency is authorized to issue subpoenas and to take testimony or receive other information from witnesses under oath; and

“(4) ‘court of the United States’ includes the Superior Court and the Court of Appeals of the District of Columbia.

“§ 3-10D2. Immunity Generally

“If a person refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to:

“(a) a court or grand jury of the United States;

“(b) an agency of the United States; or

“(c) either House or any committee, joint committee, or subcommittee of Congress,

and the person presiding over the proceeding informs such person of an order issued under this subchapter, such person shall not refuse to comply with the order on the basis of his privilege against self-incrimination. No testimony or other information compelled under such an order, or any information obtained by the exploitation of such testimony or other information, may be used against such person in any criminal case, except a prosecution for perjury, false statement, or otherwise failing to comply with such order.

§ 3-10D3. Court or Grand Jury Proceeding

“(a) GENERAL.—If a person has been or may be called to testify or provide other information at any proceeding before or ancillary to a court or grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held, shall issue, in accordance with the criteria in subsection (b), and upon the request of the attorney for the government for such district, an order requiring such person to testify or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination. Such an order shall become effective as provided in section 3-10D2 (Immunity Generally).

“(b) CRITERIA.—An attorney for the government may, with the approval of the Attorney General, request an order under subsection (a), when in his judgment:

“(1) the testimony or other information from such person may be necessary to the public interest; and

“(2) such person has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

§ 3-10D4. Administrative Proceeding

“(a) GENERAL.—If a person has been or may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may issue, in accordance with subsection (b), an order requiring such person to testify or provide other information which he refuses to give or provide on the basis of this privilege against self-incrimination. Such an order shall become effective as provided in section 3-10D2 (Immunity Generally).

“(b) CRITERIA.—An agency of the United States may, with the approval of the Attorney General, issue an order under subsection (a) when in its judgment:

“(1) the testimony or other information from such person may be necessary to the public interest; and

“(2) such person has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

§ 3-10D5. Congressional Proceeding

“(a) GENERAL.—If a person has been or may be called to testify or provide other information at any proceeding before either House or any committee, joint committee or any subcommittee of Congress, a district court of the United States shall issue, in accordance with sub-

section (b), upon the request of a duly authorized representative of the House or the committee, subcommittee, or joint committee of Congress concerned, an order requiring such person to testify or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination. Such an order shall become effective as provided in section 3-10D2 (Immunity Generally).

“(b) **CRITERIA.**—Before issuing an order under subsection (a), a district court of the United States shall find that:

“(1) in the case of a proceeding before a House of Congress, that the request for such an order has been approved by an affirmative vote of a majority of the Members present in that House;

“(2) in the case of a proceeding before a committee, joint committee or subcommittee of Congress that the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

“(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request such order.

“(c) **POSTPONEMENT.**—Upon application of the Attorney General, the district court of the United States shall defer the issuance of any order under subsection (a) for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

“Subchapter E.—Rendition

“Sec.

“3-10E1. Definition of Terms.

“3-10E2. General Provisions.

“3-10E3. Interstate Agreement on Detainers.

“3-10E4. Fugitive from State to State.

“§ 3-10E1. Definition of Terms

“As used in this subchapter, unless it is otherwise provided or a different meaning plainly is required:

“(1) ‘appropriate court’ means, with respect to the United States, a court of the United States, and with respect to the District of Columbia, a court of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending;

“(2) ‘Governor’ means, with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Commissioner of the District of Columbia.

1 **“§ 3-10E2. General Provisions**

2 “(a) **ENFORCEMENT AND COOPERATION.**—All courts, departments,
3 agencies, officers, and employees of the United States and of the Dis-
4 trict of Columbia are directed to enforce the agreement on detainers
5 and to cooperate with one another and with all party states in enforc-
6 ing and effectuating its purpose.

7 “(b) **REGULATIONS, FORMS, AND INSTRUCTIONS.**—For the United
8 States, the Attorney General, and for the District of Columbia, the
9 Commissioner of the District of Columbia, shall establish such regula-
10 tions, prescribe such forms, issue such instruction, and do whatever
11 else is necessary to carry out the provision of this chapter.

12 “(c) **RESERVATION.**—The right to alter, amend, or repeal this sub-
13 chapter is expressly reserved.

14 **“§ 3-10E3. Interstate Agreement on Detainers**

15 “The Interstate Agreement on Detainers is hereby enacted into law
16 and entered into by the United States on its own behalf and on behalf
17 of the District of Columbia with all jurisdictions legally joining in
18 substantially the following form :

19 “The contracting States solemnly agree that

20 **“ARTICLE I**

21 “The party States find that charges outstanding against a prisoner,
22 detainers based on untried indictments, informations, or complaints
23 and difficulties in securing speedy trial of persons already incarcerated
24 in other jurisdictions, produce uncertainties which obstruct programs
25 of prisoner treatment and rehabilitation. Accordingly, it is the policy
26 of the party States and the purpose of this agreement to encourage
27 the expeditious and orderly disposition of such charges and determina-
28 tion of the proper status of any and all detainers based on untried in-
29 dictments, informations, or complaints. The party States also find that
30 proceedings with reference to such charges and detainers, when ema-
31 nating from another jurisdiction, cannot properly be had in the
32 absence of cooperative procedures. It is the further purpose of this
33 agreement to provide such cooperative procedures.

34 **“ARTICLE II**

35 “As used in this agreement :

36 “(a) ‘State’ shall mean a State of the United States; the United
37 States of America; a territory or possession of the United States;
38 the District of Columbia; the Commonwealth of Puerto Rico.

39 “(b) ‘Sending State’ shall mean a State in which a prisoner is in-
40 carcerated at the time that he initiates a request for final disposition

1 pursuant to article III hereof or at the time that a request for custody
2 or availability is initiated pursuant to article IV hereof.

3 “(c) ‘Receiving State’ shall mean the State in which trial is to be
4 had on an indictment, information, or complaint pursuant to article
5 III or article IV hereof.

6 “ARTICLE III

7 “(a) Whenever a person has entered upon a term of imprisonment in
8 a penal or correctional institution of a party State, and whenever dur-
9 ing the continuance of the term of imprisonment there is pending in
10 any other party State any untried indictment, information, or com-
11 plaint on the basis of which a detainer has been lodged against the
12 prisoner, he shall be brought to trial within one hundred and eighty
13 days after he shall have caused to be delivered to the prosecuting officer
14 and the appropriate court of the prosecuting officer’s jurisdiction
15 written notice of the place of his imprisonment and his request for a
16 final disposition to be made of the indictment, information, or com-
17 plaint: *Provided*, That, for good cause shown in open court, the pris-
18 oner or his counsel being present, the court having jurisdiction of the
19 matter may grant any necessary or reasonable continuance. The re-
20 quest of the prisoner shall be accompanied by a certificate of the appro-
21 priate official having custody of the prisoner, stating the term of
22 commitment under which the prisoner is being held, the time already
23 served, the time remaining to be served on the sentence, the amount of
24 good time earned, the time of parole eligibility of the prisoner, and
25 any decision of the State parole agency relating to the prisoner.

26 “(b) The written notice and request for final disposition referred
27 to in paragraph (a) hereof shall be given or sent by the prisoner to the
28 warden, commissioner of corrections, or other official having custody
29 of him, who shall promptly forward it together with the certificate to
30 the appropriate prosecuting official and court by registered or certified
31 mail, return receipt requested.

32 “(c) The warden, commissioner of corrections, or other official hav-
33 ing custody of the prisoner shall promptly inform him of the source
34 and contents of any detainer lodged against him and shall also inform
35 him of his right to make a request for final disposition of the indict-
36 ment, information, or complaint on which the detainer is based.

37 “(d) Any request for final disposition made by a prisoner pursuant
38 to paragraph (a) hereof shall operate as a request for final disposition
39 of all untried indictments, informations, or complaints on the basis of
40 which detainees have been lodged against the prisoner from the State

1 to whose prosecuting official the request for final disposition is specif-
2 ically directed. The warden, commissioner of corrections, or other
3 official having custody of the prisoner shall forthwith notify all
4 appropriate prosecuting officers and courts in the several jurisdictions
5 within the State to which the prisoner's request for final disposition is
6 being sent of the proceeding being initiated by the prisoner. Any noti-
7 fication sent pursuant to this paragraph shall be accompanied by copies
8 of the prisoner's written notice, request, and the certificate. If trial is
9 not had on any indictment, information, or complaint contemplated
10 hereby prior to the return of the prisoner to the original place of im-
11 prisonment, such indictment, information, or complaint shall not be of
12 any further force or effect, and the court shall enter an order dismissing
13 the same with prejudice.

14 “(e) Any request for final disposition made by a prisoner pursuant
15 to paragraph (a) hereof shall also be deemed to be a waiver of
16 extradition with respect to any charge or proceeding contemplated
17 thereby or included therein by reason of paragraph (d) hereof, and
18 a waiver of extradition to the receiving State to serve any sentence
19 there imposed upon him, after completion of his term of imprison-
20 ment in the sending State. The request for final disposition shall also
21 constitute a consent by the prisoner to the production of his body in
22 any court where his presence may be required in order to effectuate
23 the purposes of this agreement and a further consent voluntarily to
24 be returned to the original place of imprisonment in accordance
25 with the provisions of this agreement. Nothing in this paragraph shall
26 prevent the imposition of a concurrent sentence if otherwise per-
27 mitted by law.

28 “(f) Escape from custody by the prisoner subsequent to his execu-
29 tion of the request for final disposition referred to in paragraph (a)
30 hereof shall void the request.

31 “ARTICLE IV

32 “(a) The appropriate officer of the jurisdiction in which an untried
33 indictment, information, or complaint is pending shall be entitled
34 to have a prisoner against whom he has lodged a detainer and who is
35 serving a term of imprisonment in any party State made available in
36 accordance with article V(a) hereof upon presentation of a written
37 request for temporary custody or availability to the appropriate au-
38 thorities of the State in which the prisoner is incarcerated: *Provided*,
39 That the court having jurisdiction of such indictment, information, or
40 complaint shall have duly approved, recorded, and transmitted the

1 request: *And provided further*, That there shall be a period of thirty
2 days after receipt by the appropriate authorities before the request
3 be honored, within which period the Governor of the sending State
4 may disapprove the request for temporary custody or availability,
5 either upon his own motion or upon motion of the prisoner.

6 “(b) Upon receipt of the officer’s written request as provided in
7 paragraph (a) hereof, the appropriate authorities having the prisoner
8 in custody shall furnish the officer with a certificate stating the term
9 of commitment under which the prisoner is being held, the time
10 already served, the time remaining to be served on the sentence, the
11 amount of good time earned, the time of parole eligibility of the
12 prisoner, and any decisions of the State parole agency relating to the
13 prisoner. Said authorities simultaneously shall furnish all other officers
14 and appropriate courts in the receiving State who has lodged detainers
15 against the prisoner with similar certificates and with notices inform-
16 ing them of the request for custody or availability and of the reasons
17 therefor.

18 “(c) In respect of any proceeding made possible by this article,
19 trial shall be commenced within one hundred and twenty days of the
20 arrival of the prisoner in the receiving State, but for good cause shown
21 in open court, the prisoner or his counsel being present, the court
22 having jurisdiction of the matter may grant any necessary or reason-
23 able continuance.

24 “(d) Nothing contained in this article shall be construed to deprive
25 any prisoner of any right which he may have to contest the legality
26 of his delivery as provided in paragraph (a) hereof, but such delivery
27 may not be opposed or denied on the ground that the executive author-
28 ity of the sending State has not affirmatively consented to or ordered
29 such delivery.

30 “(e) If trial is not had on any indictment, information, or com-
31 plaint contemplated hereby prior to the prisoner’s being returned to
32 the original place of imprisonment pursuant to article V(e) hereof,
33 such indictment, information, or complaint shall not be of any further
34 force or effect, and the court shall enter an order dismissing the same
35 with prejudice.

36 “ARTICLE V

37 “(a) In response to a request made under article III or article IV
38 hereof, the appropriate authority in a sending State shall offer to de-
39 liver temporary custody of such prisoner to the appropriate author-
40 ity in the State where such indictment, information, or complaint is

1 pending against such person in order that speedy and efficient prose-
2 cution may be had. If the request for final disposition is made by the
3 prisoner, the offer of temporary custody shall accompany the writ-
4 ten notice provided for in article III of this agreement. In the case
5 of a Federal prisoner, the appropriate authority in the receiving State
6 shall be entitled to temporary custody as provided by this agreement
7 or to the prisoner's presence in Federal custody at the place of trial,
8 whichever custodial arrangement may be approved by the custodian.

9 “(b) The officer or other representative of a State accepting an
10 offer of temporary custody shall present the following upon demand:

11 “(1) Proper identification and evidence of his authority to act
12 for the State into whose temporary custody this prisoner is to be
13 given.

14 “(2) A duly certified copy of the indictment, information, or
15 complaint on the basis of which the detainer has been lodged
16 and on the basis of which the request for temporary custody of
17 the prisoner has been made.

18 “(c) If the appropriate authority shall refuse or fail to accept
19 temporary custody of said person, or in the event that an action on
20 the indictment, information, or complaint on the basis of which the
21 detainer has been lodged is not brought to trial within the period
22 provided in article II or article IV hereof, the appropriate court of
23 the jurisdiction where the indictment, information, or complaint has
24 been pending shall enter an order dismissing the same with prejudice,
25 and any detainer based thereon shall cease to be of any force or
26 effect.

27 “(d) The temporary custody referred to in this agreement shall
28 be only for the purpose of permitting prosecution on the charge or
29 charges contained in one or more untried indictments, informations,
30 or complaints which form the basis of the detainer or detainers or for
31 prosecution on any other charge or charges arising out of the same
32 transaction. Except for his attendance at court and while being
33 transported to or from any place at which his presence may be re-
34 quired, the prisoner shall be held in a suitable jail or other facility
35 regularly used for persons awaiting prosecution.

36 “(e) At the earliest practicable time consonant with the purposes
37 of this agreement, the prisoner shall be returned to the sending State.

38 “(f) During the continuance of temporary custody or while the
39 prisoner is otherwise being made available for trial as required by
40 this agreement, time being served on the sentence shall continue to

1 run but good time shall be earned by the prisoner only if, and to the
2 extent that, the law and practice of the jurisdiction which imposed the
3 sentence may allow.

4 “(g) For all purpose other than that for which temporary custody
5 as provided in this agreement is exercised, the prisoner shall be
6 deemed to remain in the custody of and subject to the jurisdiction of
7 the sending State and any escape from temporary custody may be
8 dealt with in the same manner as an escape from the original place
9 of imprisonment or in any other manner permitted by law.

10 “(h) From the time that a party State receives custody of a
11 prisoner pursuant to this agreement until such prisoner is returned
12 to the territory and custody of the sending State, the State in which
13 the one or more untried indictments, informations, or complaints are
14 pending or in which trial is being had shall be responsible for the
15 prisoner and shall also pay all costs of transporting, caring for,
16 keeping, and returning the prisoner. The provisions of this para-
17 graph shall govern unless the States concerned shall have entered into
18 a supplementary agreement providing for a different allocation of
19 costs and responsibilities as between or among themselves. Nothing
20 herein contained shall be construed to alter or affect any internal
21 relationship among the departments, agencies, and officers of and in
22 the government of a party State, or between a party State and its sub-
23 divisions, as to the payment of costs, or responsibilities therefor.

24 “ARTICLE VI

25 “(a) In determining the duration and expiration dates of the time
26 periods provided in articles III and IV of this agreement, the running
27 of said time periods shall be tolled whenever and for as long as the
28 prisoner is unable to stand trial, as determined by the court having
29 jurisdiction of the matter.

30 “(b) No provision of this agreement, and no remedy made avail-
31 able by this agreement shall apply to any person who is adjudged to
32 be mentally ill.

33 “ARTICLE VII

34 “Each State party to this agreement shall designate an officer who,
35 acting jointly with like officers of other party States, shall promul-
36 gate rules and regulations to carry out more effectively the terms and
37 provisions of this agreement, and who shall provide, within and
38 without the State, information necessary to the effective operation of
39 this agreement.

1 "ARTICLE VIII

2 "This agreement shall enter into full force and effect as to a party
3 State when such State has enacted the same into law. A State party
4 to this agreement may withdraw herefrom by enacting a statute re-
5 pealing the same. However, the withdrawal of any State shall not af-
6 fect the status of any proceedings already initiated by inmates or by
7 State officers at the time such withdrawal takes effect, nor shall it
8 affect their rights in respect hereof.

9 "ARTICLE IX

10 "This agreement shall be liberally construed so as to effectuate its
11 purposes. The provisions of this agreement shall be severable and if
12 any phrase, clause, sentence, or provision of this agreement is de-
13 clared to be contrary to the constitution of any party State or of the
14 United States, the applicability of other provisions thereof to any
15 government, agency, person, or circumstance shall not be affected
16 thereby. If this agreement shall be held contrary to the constitution
17 of any State party hereto, the agreement shall remain in full force
18 and effect as to the remaining States and in full force and effect as to
19 the State affected as to all severable matters.

20 "§ 3-10E4. Fugitive from State to State

21 "If the executive authority of a state demands the return of a per-
22 son, as a fugitive from justice, by the executive authority of a state
23 to which such person has fled, the demand shall be accompanied by a
24 copy of an indictment returned or an affidavit made before a court of
25 the demanding state charging such person with the commission of an
26 offense. Such copy shall be certified as authentic by the governor or
27 chief magistrate of the state from which the person so charged has
28 fled. Upon receipt of the demand and accompanying documents, the
29 executive authority of the state to which such person has fled shall:

30 "(a) cause such person to be arrested and held in official deten-
31 tion;

32 "(b) notify the executive authority of the demanding state, or
33 the agent of such authority appointed to receive the fugitive;
34 and

35 "(c) deliver the fugitive to such agent when such agent ap-
36 pears.

37 If no agent of the demanding state appears within 30 days of the date
38 of arrest to take the fugitive into his custody, the person shall be dis-

1 charged. An agent who receives such fugitive into his custody is em-
2 powered to transport him to the state from which he has fled.

3 **"Subchapter F.—Extradition**

"Sec.

"3-10F1. General Provisions.

"3-10F2. Extradition of Fugitive.

"3-10F3. Procedure for Extradition.

4 **"§ 3-10F1. General Provisions**

5 "(a) **SCOPE AND LIMITATION.**—The provisions of this subchapter
6 relating to the surrender of a person who is alleged to have committed
7 an offense in a foreign country shall continue in force only during the
8 existence of a treaty of extradition with such foreign country.

9 "(b) **SECRETARY OF STATE.**—The Secretary of State may order a
10 person committed under section 3-10F2 (Extradition of Fugitive) to
11 be delivered to an authorized agent of a foreign government for trial
12 for the offense charged. The agent may hold such person in official de-
13 tention and may take him to the territory of such foreign government,
14 under the provisions of the applicable treaty of extradition. If such
15 person escapes he may be retaken in the same manner as any person
16 accused of any offense.

17 "(c) **FEES AND COSTS.**—All costs or expenses incurred in an extradi-
18 tion proceeding in apprehending, securing, and transmitting a fugi-
19 tive shall be paid by the demanding authority. In cases of interna-
20 tional extradition, all witness fees and costs of every character, includ-
21 ing court costs, shall be certified to the Secretary of State by the judge
22 or magistrate before which the hearing is held. Such fees and costs
23 shall be paid out of appropriations to defray the expenses of the
24 judiciary or the Department of Justice. The Attorney General shall
25 certify to the Secretary of State the amounts to be paid to the United
26 States on account of such fees and costs in such cases by the foreign
27 government requesting the extradition. The Secretary of State shall
28 cause such amounts to be collected and transmitted to the Attorney
29 General for deposit in the Treasury.

30 "(d) **DEFINITIONS.**—As used in this subchapter :

31 "(1) 'Secretary of State' means the Secretary of State of the
32 United States;

33 "(2) 'Treasury' means the Treasury of the United States.

34 **"§ 3-10F2. Extradition of Fugitive**

35 "(a) **FROM FOREIGN COUNTRY TO UNITED STATES.**—If there is a
36 treaty or convention for extradition between the United States and a
37 foreign country, a United States magistrate or a judge of a court of the

United States or a judge of a court of record of general jurisdiction of any state may, upon complaint made under oath, issue a warrant for the apprehension of a person who is within the jurisdiction of the court and who is charged with having committed, within the jurisdiction of such foreign country, an offense covered by the provisions of such treaty or convention. Upon apprehension, the person shall be brought before such magistrate or judge for a hearing. If, after a hearing, the magistrate or judge finds that the evidence is sufficient to sustain the charge under the provisions of such treaty or convention, he shall certify such finding, together with a copy of all the testimony taken before him, to the Secretary of State, so that a warrant may issue upon a formal request from the proper authorities of such foreign country for the surrender of such person under the provisions of such treaty or convention. Pending surrender, the magistrate or judge shall order such person held in official detention.

“(b) FROM STATE INTO FEDERAL TERRITORIAL JURISDICTION OUTSIDE OF THE UNITED STATES.—If the executive authority of a state demands the return of an American citizen or national, as a fugitive from justice, who has fled to a place outside the United States but where the Federal government exercises territorial jurisdiction, the demand shall be accompanied by a copy of an indictment returned or an affidavit made before a court of the demanding state charging such person with the commission of an offense. Such copy shall be certified as authentic by the governor or chief magistrate of the demanding state or other person specially authorized. Upon receipt of the demand and accompanying documents, the Federal public servant who is vested with authority shall cause such fugitive to be arrested and held in official detention. Upon apprehension, such Federal public servant shall notify the executive authority making the demand or the agent of such authority who is appointed to receive the fugitive and shall cause the fugitive to be delivered to such agent. If no such agent appears within three months of the date of arrest, to take the fugitive into his custody, the person shall be discharged. An agent who receives such fugitive into his custody is empowered to transport him to the jurisdiction from which he has fled.

“(c) FROM COUNTRY UNDER CONTROL OF THE UNITED STATES TO THE UNITED STATES.—(1) Whenever any foreign country or territory, or any part of such country or territory, is occupied by or under the control of the United States, a person who violates the criminal laws in force in such country or territory by the commission of an offense

1 substantially comparable to an offense set forth in paragraph (2) of
 2 this subsection shall be liable to arrest and official detention by a Fed-
 3 eral law enforcement officer if he departs or flees from justice in such
 4 country or territory to the United States. Upon the written request or
 5 requisition of the military governor or other chief executive officer in
 6 control of such foreign country or territory, such person shall be
 7 surrendered and returned for trial under the laws in force in the place
 8 where the offense was committed.

9 “(2) This subchapter, so far as applicable, shall govern proceedings
 10 authorized by this subsection. Such proceedings shall be held before
 11 a judge of a district court of the United States. Such judge shall hold
 12 such person on evidence which establishes probable cause that he is
 13 guilty of the commission of an offense substantially comparable to an
 14 offense set forth in the following sections:

15 “2-6D1 (Perjury);

16 “2-7B1 (Murder);

17 “2-7B2 (Reckless Homicide);

18 “2-7B3 (Manslaughter);

19 “2-7C1 (Maiming);

20 “2-7C2 (Aggravated Assault);

21 “2-7D1 (Aggravated Kidnapping);

22 “2-7D4 (Skyjacking);

23 “2-7D5 (Mutiny or Commandeering);

24 “2-7E1 (Rape);

25 “2-8B1 (Aggravated Arson);

26 “2-8B2 (Arson);

27 “2-8B5 (Aggravated Malicious Mischief);

28 “2-8C1 (Armored Burglary);

29 “2-8C2 (Burglary);

30 “2-8C4 (Aggravated Criminal Trespass);

31 “2-8D1 (Armed Robbery);

32 “2-8D2 (Robbery);

33 “2-8D3 (Theft) where such offense is felonious;

34 “2-8D4 (Receiving Stolen Property);

35 “2-8D5 (Scheme to Defraud);

36 “2-8E1 (Counterfeiting);

37 “2-8E2 (Forgery);

38 “2-8E4 (Trafficking in Specious Securities);

39 “2-8E6 (Issuance of Written Instrument Without Authority);

40 . and piracy by the law of nations.

1 “(3) No return or surrender shall be made of a person charged with
2 the commission of an offense of a political character.

3 “(4) If so held, such person shall be returned and surrendered to
4 the authorities in control of such foreign country or territory on the
5 order of the Secretary of State. Such authorities shall secure to such
6 person a fair and impartial trial.

7 **“§ 3-10F3. Procedure for Extradition**

8 “(a) **PROVISIONAL ARREST AND DETENTION.**—The provisional arrest
9 and detention of a person under section 3-10F2 (Extradition of Fugitive), prior to the presentation of formal proofs, may be obtained
10 upon a request in writing from an authority competent to request the
11 surrender of such fugitive addressed to an authority competent to
12 grant such surrender. The request shall include an express statement
13 that a warrant for the arrest of such fugitive has been issued within
14 the jurisdiction of the authority making the request and that the war-
15 rant charges the fugitive with commission of the offense for which
16 his extradition is sought to be obtained. No person shall be held under
17 this section for more than ninety days.

19 “(b) **TIME OF COMMITMENT PENDING EXTRADITION.**—If a person
20 who is committed for extradition to a foreign country and delivery to
21 an authorized agent of the government of such country is not so deliv-
22 ered and conveyed out of the United States within two calendar
23 months following such commitment, any Federal or state judge, upon
24 application made to him by or on behalf of the person so committed
25 and upon proof that reasonable notice of such application has been
26 given to the Secretary of State, may order such person discharged out
27 of official detention, unless sufficient cause is shown why discharge
28 ought not to be ordered.

29 “(c) **HEARING ON EXTRADITION.**—(1) Hearings in cases of extradi-
30 tion under the provisions of a treaty or convention shall be held on
31 land, publicly, in a room or office easily accessible to the public.

32 “(2) Depositions, warrants, or other papers or copies of such papers
33 which are offered in evidence upon the hearing of any extradition case
34 shall be received and admitted in evidence at such hearing for all the
35 purposes of such hearing if they are properly and legally authenticated
36 in such a way as to permit them to be received for similar purposes by
37 the tribunals of the foreign country from which the fugitive has de-
38 parted or fled. The certificate of the principal resident United States
39 foreign service officer in such foreign country shall be prima facie evi-
40 dence of authentication in the required manner.

“(3) In a hearing on extradition, if the person charged files an affidavit declaring that there are one or more witnesses whose evidence is material to his defense, that he cannot safely go to trial without such witness or witnesses, what he expects to prove by each such witness, and that he is not possessed of sufficient means to pay the fees of such witness or witnesses, the judge or magistrate hearing the matter may order such witnesses to be subpoenaed. The costs incurred by such process and the fees of witnesses shall be paid in the same manner as in the case of witnesses subpoenaed in behalf of the United States.

“(d) PROTECTION OF ACCUSED.—If a person is delivered by a foreign government to an agent of the United States for return to the United States for trial for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safekeeping of such person, including his security against lawless violence, until the final conclusion of his trial and until his final discharge from official detention for or on account of the offense specified in the warrant of extradition, and for a reasonable time following release from such detention. The President may assign such portion of the armed services or United States marshals and their deputies, as may be necessary for the safekeeping and protection of such person.

“(e) AUTHORITY OF RECEIVING AGENT.—A duly appointed agent to receive, on behalf of the United States, the delivery by a foreign government of a person accused of an offense committed within the United States and to convey such person to the place of his trial shall have all the powers of a United States marshal in the several districts through which it may be necessary for him to pass, so far as such power is necessary for the safekeeping of the such person.

“Chapter 11.—COURTS

“Subchapter

“A. General Provisions.

“B. Jurisdiction and Venue.

“C. Mental Incapacity.

“D. Sentencing.

“E. Appellate Review.

“Subchapter A.—General Provisions

“Sec.

“3-11A1. Rules.

“3-11A2. Appointment of Counsel.

“3-11A3. Foreign Documents.

“3-11A4. Admissibility of Confessions.

“3-11A5. Admissibility of Eyewitness Testimony.

“3-11A6. Execution of Sentence of Death.

1 **“§ 3-11A1. Rules**

2 “(a) **PROCEDURE TO AND INCLUDING VERDICT.**—The Supreme Court
3 of the United States shall have the power to prescribe, from time to
4 time, rules of pleading, practice, and procedure with respect to any
5 or all proceedings prior to and including verdict, or finding of
6 guilty or not guilty by the court if a jury has been waived, or plea
7 of guilty, in criminal cases and proceedings to punish for criminal
8 contempt of court in the United States district courts, in the district
9 courts for the District of the Canal Zone and the Virgin Islands, in
10 the Supreme Court of Puerto Rico, and in proceedings before United
11 States magistrates. Such rules shall not take effect until they have
12 been reported to Congress by the Chief Justice at or after the begin-
13 ning of a regular session of Congress but not later than the first day of
14 May, and until the expiration of ninety days after which they have
15 been reported. All laws in force at the expiration of such time and
16 in conflict with such rules shall be of no further force or effect after
17 such rules have taken effect.

18 “(b) **PROCEDURE AFTER VERDICT.**—The Supreme Court of the
19 United States shall have the power to prescribe, from time to time,
20 rules of practice, and procedure with respect to any or all proceed-
21 ings after verdict, or finding of guilty by the court if a jury has
22 been waived, or plea of guilty, in criminal cases and proceedings
23 to punish for criminal contempt in the United States district courts,
24 in the district courts for the District of the Canal Zone and the Virgin
25 Islands, in the Supreme Court of Puerto Rico, before United States
26 magistrates, in the United States courts of appeals, and in the Su-
27 preme Court of the United States. This section shall not give the Su-
28 preme Court power to abridge the right of the defendant to apply for
29 withdrawal of a plea of guilty, if such application be made within ten
30 days after entry of such plea, and before sentence is imposed. The
31 right of appeal shall continue in those cases in which appeals are
32 authorized by law, but the rules made as authorized under this section
33 may prescribe the times for and manner of taking appeals and applying
34 for writs of certiorari and preparing records and bills of exceptions
35 and the conditions on which supersedeas, bail, or release pending
36 appeal may be allowed. The Supreme Court may fix the dates when
37 such rules shall take effect and the extent to which they shall apply
38 to proceedings then pending. Such rules shall not take effect until
39 they have been reported to Congress by the Chief Justice at or after
40 the beginning of a regular session of Congress but not later than the

1 first day of May, and until the expiration of ninety days after which
2 they have been reported. All laws in force at the expiration of such
3 time and in conflict with such rules shall be of no further force or
4 effect after such rules have taken effect.

5 **“§ 3-11A2. Appointment of Counsel**

6 “(a) RULES AND REPORTS.—Each district court and judicial coun-
7 cil of a circuit shall submit a report to the Administrative Office of
8 the United States Courts on the appointment of counsel within its
9 jurisdiction. The report shall be in such form and shall be submitted
10 at such times as the Judicial Conference of the United States may
11 specify. The Judicial Conference of the United States may, from time
12 to time, issue rules and regulations governing the operation of plans
13 for the appointment of counsel.

14 “(b) APPROPRIATIONS.—There are authorized to be appropriated to
15 the courts of the United States, out of any money in the Treasury not
16 otherwise appropriated, sums necessary to carry out the provisions of
17 law as to appointment of counsel. When so specified in appropriation
18 acts, such appropriations shall remain available until expended.
19 Payments from such appropriations shall be made under the supervi-
20 sion of the Director of the Administrative Office of the United States
21 Courts.

22 “(c) DISTRICT OF COLUMBIA.—The Judicial Council of the District
23 of Columbia and the District of Columbia Court of Appeals shall
24 jointly approve a plan for the appointment of counsel not inconsistent
25 with the plans in effect in the courts of the United States.

26 **“§ 3-11A3. Foreign Documents**

27 “(a) APPROPRIATIONS.—Any appropriation available for the pay-
28 ment of fees and costs in the case of witnesses subpoenaed in behalf of
29 the United States in criminal cases shall be available for any fees or
30 costs which the United States is required to pay with respect to foreign
31 documents.

32 “(b) REGULATIONS AS TO COMMISSIONS AND FEES.—The President is
33 authorized to prescribe regulations governing the manner of executing
34 and returning commissions by consular officers under the provisions of
35 law and schedules of fees allowable to witnesses, foreign counsel, and
36 interpreters.

37 **“§ 3-11A4. Admissibility of Confessions**

38 “(a) APPLICATION.—In a criminal prosecution brought by the United
39 States or the District of Columbia, a confession shall be admis-
40 sible in evidence if it was made or given voluntarily. Before such con-

fession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made or given it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all of the circumstances.

“(b) **FACTORS.**—In determining the issues of voluntariness, the trial judge shall take into consideration all of the circumstances surrounding the making or giving of the confession, including:

“(1) the amount of time which elapsed between the arrest and the arraignment of the defendant who confessed, if such confession was made or given after arrest and before arraignment;

“(2) whether such defendant knew the character of the offense with which he was charged or of which he was suspected at the time of the confession;

“(3) whether or not such defendant was advised or knew that he was not required to make a statement and that such statement could be used against him;

“(4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and

“(5) whether or not such defendant was without the assistance of counsel when questioned and when making or giving such confession.

The presence or absence of any of these factors is not conclusive as to voluntariness.

“(c) **DELAY IN DETENTION.**—In a criminal prosecution by the United States or the District of Columbia, a confession made or given by a person who is a defendant in such prosecution, while such person was in official detention, shall not be inadmissible solely because of delay in bringing such person before a magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if:

“(1) such confession is found by the trial judge to have been made or given voluntarily;

“(2) the weight to be given the confession is left to the jury; and

“(3) such confession was made or given by such person within six hours immediately following his arrest or other official detention. Such time limitation shall not apply if the delay in bringing such person before a magistrate or other officer is found by the

1 trial judge to be reasonable in view of the distance to be traveled
 2 to the nearest available such magistrate or other officer and the
 3 means of transportation available.

4 “(d) **SPONTANEOUS CONFESSION.**—Nothing in this section bars the
 5 admission in evidence of a confession made or given voluntarily by
 6 a person to any other person without interrogation by anyone, or at a
 7 time when the person who made or gave such confession was not
 8 under arrest or held in official detention.

9 “(e) **DEFINITION.**—As used in this section, ‘confession’ means any
 10 statement or admission of guilt or responsibility for the commission
 11 of an offense or a self-incriminating statement made or given orally or
 12 in writing.

13 **“§ 3-11A5. Admissibility of Eyewitness Testimony**

14 “The testimony of a person that he saw a defendant commit or par-
 15 ticipate in the commission of an offense for which the defendant is
 16 being tried shall be admissible in evidence in a criminal prosecution
 17 in any trial court ordained and established under article III of the
 18 Constitution of the United States.

19 **“§ 3-11A6. Execution of Sentence of Death**

20 “The manner of inflicting the punishment of death shall be that
 21 prescribed by the laws of the place within which the sentence is im-
 22 posed. The United States marshal charged with the execution of the
 23 sentence may use available local facilities and the services of an appro-
 24 priate local official or employ some other person for such purpose, and
 25 pay the cost of such service in an amount approved by the Attorney
 26 General. If the laws of the place within which sentence is imposed
 27 make no provision for the infliction of the penalty of death, then the
 28 court shall designate some other place in which such sentence shall be
 29 executed in the manner prescribed by the laws of such place.

30 **“Subchapter B.—Jurisdiction and Venue**

“Sec.

“3-11B1. Power of Courts and Magistrates.

“3-11B2. Jurisdiction Outside the United States.

“3-11B3. District Courts.

“3-11B4. United States Magistrate.

“3-11B5. Offense Involving Two Districts.

“3-11B6. Offense Not Committed in Any District.

“3-11B7. New District or Division.

“3-11B8. Place of Commission of Certain Offenses.

31 **“§ 3-11B1. Power of Courts and Magistrates**

32 “(a) **GENERAL.**—A person accused of an offense may be arrested by
 33 order of a magistrate or a court of the United States or a judicial
 34 officer of the State in which such person is found and may be held in

1 official detention or released, as provided by rule, pending trial be-
2 fore a court or magistrate of the United States which has cognizance
3 of the offense. Copies of the process shall be returned as speedily as
4 possible to the office of the clerk of such court or magistrate together
5 with the recognizance of each witness for his appearance to testify
6 in the case.

7 “(b) STATE.—A judicial officer of a state acting under this section
8 may proceed according to the usual mode of procedure in such state,
9 but his power shall not extend beyond determining whether to hold
10 the person for trial or to discharge him from official detention.

11 **“§ 3-11B2. Jurisdiction Outside the United States**

12 “(a) APPLICATION.—Section 3-11B1 (Power of Courts and Magis-
13 trates) shall apply :

14 “(1) in any country outside the United States where the United
15 States exercises jurisdiction for the arrest and removal from such
16 country to the United States of :

17 “(i) a person who is a fugitive from justice charged with
18 or convicted of the commission of an offense, or who is charged
19 with an offense within section 1-1A7 (Extraterritorial
20 Jurisdiction) ; or

21 “(ii) a person who is charged with the commission of an
22 offense against a citizen or national of the United States out-
23 side the jurisdiction of any nation ; and

24 “(2) throughout the United States for the arrest and removal
25 from the United States to the jurisdiction of an officer or repre-
26 sentative of the United States vested with judicial authority in
27 a country outside the United States in which the United States
28 exercises jurisdiction, of a citizen or national of the United States

29 “(i) who is a fugitive from justice charged with or con-
30 victed of the commission of an offense in any country outside
31 the United States in which the United States exercises juris-
32 diction ; or

33 “(ii) who is charged with the commission in any such
34 country of an offense within section 1-1A7 (Extraterritorial
35 Jurisdiction).

36 “(b) AUTHORITY.—A person referred to in subsection (a) may be
37 arrested by an authorized agent of the United States acting according
38 to the usual mode of process in the jurisdiction in which such person
39 is found. Such person may be held in official detention or released, as
40 provided by rule, pending the issuance of a warrant for his removal.

1 An officer executing such a warrant outside the territorial jurisdiction
2 of the court to which he is attached shall have all the powers of a
3 United States marshal to the extent that such powers are needed for
4 the safekeeping of the person and the execution of the warrant.

5 **“§ 3-11B3. District Courts**

6 “(a) JURISDICTION.—The district courts of the United States shall
7 have original jurisdiction, exclusive of the courts of the states, of all
8 offenses against the laws of the United States.

9 “(b) CANAL ZONE AND VIRGIN ISLANDS.—The United States district
10 courts for the Canal Zone and Virgin Islands shall have jurisdiction
11 of offenses under the laws of the United States, not locally inappli-
12 cable, which are committed within the territorial jurisdiction of such
13 courts. Such courts shall have jurisdiction concurrently with the dis-
14 trict courts of the United States of offenses against the United States
15 which are committed upon the high seas.

16 “(c) STATE JURISDICTION UNIMPAIRED.—Except as otherwise ex-
17 pressly provided, nothing in this code shall take away or impair the
18 jurisdiction of the courts of the several states under the laws of the
19 states.

20 **“§ 3-11B4. United States Magistrate**

21 “When specially designated to exercise such jurisdiction by the dis-
22 trict court or courts which he serves, and under such conditions as
23 may be imposed by the terms of the special designation, a United States
24 magistrate shall have jurisdiction to try persons accused of, and sen-
25 tence persons convicted of, offenses committed within such judicial
26 district or districts.

27 **“§ 3-11B5. Offense Involving Two Districts**

28 “(a) GENERAL.—Except as otherwise provided, an offense begun in
29 one judicial district and completed in another, or committed in more
30 than one district, may be inquired of and prosecuted in any district in
31 which such offense was begun, continued, or completed.

32 “(b) MAILS OR COMMERCE JURISDICTION.—If Federal jurisdiction to
33 prosecute an offense rests upon the use of the mails, communication
34 or transportation in interstate or foreign commerce, the offense is a
35 continuing offense. Such offense may be inquired of and prosecuted
36 in any district from, through, or into which such mail communication
37 or commerce moves.

38 “(c) TAX OFFENSES.— If the offense is described in section 2-6G1
39 (Tax Evasion) or 2-6G2 (Disregard of Tax Obligation), and prosecu-
40 tion is begun in a judicial district other than the district in which the

defendant resides, the defendant, upon motion filed in the district in which the prosecution is begun, may elect to be tried in the district in which he was residing at the time the alleged offense was committed. Such motion must be filed within twenty days after arraignment of the defendant upon indictment or information.

“§ 3-11B6. Offense Not Committed in Any District

“The trial of an offense begun or committed upon the high seas, in the jurisdiction defined in section 1-1A7 (extra territorial jurisdiction), or elsewhere out of the jurisdiction of any particular state or judicial district, shall be in the district in which the defendant, or any one of two or more alleged joint defendants, is arrested or is first brought after arrest. If such defendant or defendants are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the person or of any one of two or more such persons, or if no such residence is known the indictment or information may be filed in the District of Columbia.

“§ 3-11B7. New District or Division

“If a new district or division is established, or if a county or territory is transferred from one district or division to another district or division, a prosecution for an offense committed within such district, division, county, or territory prior to such establishment or transfer shall be commenced and proceeded with in the same manner as if such new district or division had not been created, or such county or territory had not been transferred. Upon the application of the defendant, however, the court shall order the case to be removed to the new district or division for trial.

“§ 3-11B8. Place of Commission of Certain Offenses

“(a) **HOMICIDE OFFENSES.**—In all cases of murder, reckless homicide, manslaughter, aiding suicide, or criminally negligent homicide, the offense shall be deemed to have been committed at the place where the injury was inflicted, or the other means were employed which caused the death, without regard to the place where the death occurs.

“(b) **THREATENING COMMUNICATIONS.**—A person charged with an offense under section :

“2-7C4 (Menacing) ;

“2-7C5 (Terrorizing) ;

“2-9C3 (Extortion) ; or

“2-9C4 (Coercion) ;

where the threat is alleged to have originated in the United States, shall, upon motion duly made, be entitled as of right to be tried in the

district in which the matter mailed, communicated, or otherwise transmitted was first set in motion, in the mails, by communication or in commerce between the states.

"Subchapter C.—Mental Incapacity

"Sec.

"3-11C1. Definition of Terms.

"3-11C2. Panel and Examination.

"3-11C3. Determination of Competency to Stand Trial.

"3-11C4. Pretrial Commitment of Incompetent Defendant.

"3-11C5. Determination of Defense of Mental Illness or Defect.

"3-11C6. Competency of Offender.

"3-11C7. Disposition of Criminal Charges.

"3-11C8. Civil Commitment.

"§ 3-11C1. Definition of Terms

"As used in this subchapter, unless it is otherwise provided or a different meaning plainly is required :

"(1) 'competent' means mentally competent to stand trial. A person is mentally competent to stand trial if, regardless of whether he is suffering from mental illness or defect, he is able to understand the character and consequence of the proceedings against him and properly to assist in his defense;

"(2) 'court' means district court of the United States;

"(3) 'incompetent' means mentally incompetent to stand trial. A person is mentally incompetent to stand trial if he is unable to understand the character and consequences of the proceedings against him or properly to assist in his own defense;

"(4) 'likelihood of serious harm' means :

"(i) a substantial risk of bodily injury to the person himself as manifested by evidence of, or attempts at, suicide or serious bodily injury;

"(ii) a substantial risk of bodily injury to other persons as manifested by evidence of homicidal or other violent behavior or evidence that other persons are placed in reasonable fear of violent behavior and serious bodily injury to themselves; or

"(iii) a substantial risk of physical impairment or bodily injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community;

"(5) 'panel' refers to the panel of qualified psychiatrists created under section 3-11C2(a) (Designation of Panel); and

"(6) 'Secretary' means the Secretary of Health, Education, and Welfare.

1 **“§ 3-11C2. Panel and Examination**

2 “(a) **DESIGNATION OF PANEL.**—The district court for each judicial
3 district shall designate a panel of qualified psychiatrists to conduct
4 each psychiatric examination requested by such court under this sub-
5 chapter. Members of the panel shall be paid for their services by the
6 Administrative Office of the United States Courts, except that where
7 an examination is ordered at the request of the Department of Justice
8 the members of the panel shall be paid by the Department.

9 “(b) **PSYCHIATRIC EXAMINATION.**—In all cases in which psychiatric
10 examination or examination by a qualified psychiatrist is required by
11 this subchapter, the court shall refer the person to be examined to the
12 panel. Such examination shall be conducted as expeditiously as pos-
13 sible and with as minimal a restraint upon the liberty of the person to
14 be examined as is consistent with the need for proper examination. If
15 the panel demonstrates to the court that it is necessary to have such
16 person officially detained in a hospital or other medical facility in
17 order to properly complete the examination, the court may order him
18 held in official detention in such hospital or facility. For these purposes
19 the hospital facilities of the United States, including those of the Pub-
20 lic Health Service, the Veterans’ Administration, and the Department
21 of Defense, may be used.

22 “(c) **COUNSEL.**—A person shall be represented by counsel at all
23 judicial proceedings under this subchapter.

24 “(d) **COMPENSATION.**—If the court appoints a counsel or a psychia-
25 trist for a person under this subchapter, such counsel or psychiatrist
26 shall be compensated for the reasonable value of his services in an
27 amount to be determined by the court. If such person is an indigent,
28 the attorney or psychiatrist shall be compensated from funds appro-
29 priated to the courts of the United States for this purpose.

30 **“§ 3-11C3. Determination of Competency to Stand Trial**

31 “(a) **REFERRAL TO PANEL.**—If, after charge by either com-
32 plaint, information, or indictment, and prior to sentencing, the court
33 has reasonable cause to believe that a defendant may be incompetent,
34 the court shall refer such defendant to the panel for examination as
35 to competency to stand trial, unless the defendant objects. If the de-
36 fendant objects, the court shall hold a preliminary proceeding to de-
37 termine whether there is reasonable cause for such examination. The
38 scope of an examination under this section shall be limited to the de-
39 fendant’s mental competency to stand trial.

1 “(b) **REPORT.**—The panel shall prepare a report on the findings
2 and results of the examination. The report shall state the medical and
3 other data upon which the panel bases its opinion. The report shall
4 be filed with the court. Copies of the report shall be given to the
5 attorney for the government and to the defendant or his counsel not
6 later than 15 days after the defendant was referred for examination.

7 “(c) **HEARING.**—Upon receipt of the report and due notice to the
8 parties, the court shall hold a hearing, unless the report indicates that
9 the defendant is competent and the defendant, in open court, signs
10 a waiver. At such hearing, the report shall be introduced, other evi-
11 dence as to the defendant’s competency may be submitted by the par-
12 ties, and the defendant may testify, confront adverse witnesses, and
13 present evidence as to his competency. On the basis of the evidence,
14 the court shall make a finding as to the defendant’s competency to
15 stand trial.

16 **“§ 3–11C4. Pretrial Commitment of Incompetent Defendant**

17 “(a) **GENERAL.**—If the court determines that a defendant is incom-
18 petent to stand trial, it may commit him to official detention by the
19 Secretary for such care and treatment as the Secretary deems appro-
20 priate. The period of commitment shall run until the defendant is
21 determined by the court to be competent, until the charges are disposed
22 of under section 3–11C7 (Disposition of Criminal Charges), or until
23 a petition has been filed for commitment under section 3–11C8 (Civil
24 Commitment), whichever occurs first. If a defendant is found incom-
25 petent, the court shall compute the date of the expiration of the period
26 of time equal to the maximum term of imprisonment which he would
27 have had to serve, if he had been convicted of the most serious offense
28 with which he is charged. On the final date of such period, the court
29 shall dismiss the criminal charges against such defendant, or in the
30 interest of justice the court may dismiss such criminal charges earlier.
31 The Secretary may temporarily release such defendant from the in-
32 stitution to which he is committed under this section, provided that
33 notice is sent to the court and to the attorney for the government in the
34 district in which proceedings were held under section 3–11C3 (Deter-
35 mination of Competency to Stand Trial). If the attorney for the gov-
36 ernment objects to such temporary release, the court shall authorize
37 such temporary release upon a finding that there is a reasonable as-
38 surance that the defendant will not flee or present a likelihood of
39 serious harm.

1 “(b) PETITION.—Whenever a person committed under subsection
2 (a) recovers his competency, or not later than one year after the deter-
3 mination that he was incompetent, the Secretary shall petition the
4 court for a hearing to determine his present competency to stand
5 trial. A medical report on the condition of the person shall be attached
6 to such petition. If the report indicates that he remains incompetent, a
7 prognosis regarding the likelihood of his regaining his competency
8 within a reasonable time shall be included in the report.

9 “(c) HEARING.—Upon the receipt of a petition under subsection (b)
10 and due notice to the parties, the court shall hold a hearing. At such
11 hearing, the defendant may testify, confront adverse witnesses, and
12 present evidence as to his competency and prognosis. The court may
13 grant any necessary or reasonable continuance of such hearing for good
14 cause shown in open court, the attorney for the government and the
15 defendant or his counsel being present. On the basis of the evidence, the
16 court shall make a finding as to the defendant’s competency to stand
17 trial and, if he is found incompetent, as to whether he is likely to regain
18 competency within a reasonable time. If the court finds that the de-
19 fendant is competent, it shall enter an order to that effect and cause
20 him to be released from official detention by the Secretary. If the court
21 finds that the defendant is incompetent, it may order a continuation of
22 official detention or, if it finds that he is incompetent and not likely to
23 regain competency within a reasonable time, it shall order the defend-
24 ant released from official detention and the pending charges dismissed
25 unless the Secretary, within 60 days, files a petition for civil commit-
26 ment under section 3–11C8 (Civil Commitment). Upon the filing of a
27 petition under that section, the court shall dismiss the pending
28 charges.

29 **“§ 3–11C5. Determination of Defense of Mental Illness or Defect**

30 “(a) REFERRAL TO PANEL.—Whenever, after charge by either com-
31 plaint, information, or indictment, and prior to verdict, the defendant
32 or his counsel gives notice of intention to introduce evidence to support
33 a defense under section 1–3C2 (Mental Illness or Defect) or the at-
34 torney for the government demonstrates that the mental condition of
35 the defendant at the time of the alleged offense can reasonably be
36 expected to be at issue at trial, the court shall refer such defendant to
37 the panel for examination as to his mental condition at the time of
38 the alleged offense, unless the defendant objects. If the defendant ob-
39 jects, the court shall issue an order prohibiting the introduction at

1 trial of any evidence to support a defense under section 1-3C2 (Mental
2 Illness or Defect). The scope of an examination under this section shall
3 be the mental condition of the defendant at the time of the alleged
4 offense and shall include the factors necessary to a defense under sec-
5 tion 1-3C2 (Mental Illness or Defect).

6 “(b) **REPORT.**—The panel shall prepare a report on the findings and
7 results of the examination and shall designate a member of the panel
8 to testify at trial at the request of the court. The report shall state
9 the medical and other data upon which the panel bases its opinion.
10 The report shall be filed with the court. Copies of the report shall be
11 given to the attorney for the government and to the defendant or his
12 counsel as soon as possible, but in no event more than 15 days after
13 entry of the order for examination.

14 “(c) **SEPARATE EXAMINATION.**—In no case shall an examination of
15 the defendant under this section and an examination under section
16 3-11C3 (Determination of Competency to Stand Trial) be conducted
17 by the same psychiatrist.

18 **“§ 3-11C6. Competency of Offender**

19 “Whenever a psychiatrist and at least one other physician conclude
20 that there is probable cause to believe that an offender was mentally
21 incompetent at the time of his trial and the issue of mental com-
22 petency was not raised during such trial and either a hearing held
23 and a determination made or a written waiver signed under section
24 3-11C3(c) (Hearing), and the Attorney General concurs, the medical
25 report and notice of the concurrence of the Attorney General shall be
26 forwarded to the court in which the offender was convicted. Upon re-
27 ceipt of such documents, the court shall hold a hearing to determine
28 the mental competency of such person at the time of his trial in ac-
29 cordance with the provisions of section 3-11C3(c) (Hearing). At the
30 hearing such documents shall be prima facie evidence of the facts and
31 conclusions certified. If the court finds that the offender was mentally
32 incompetent at the time of his trial, the court shall vacate the judg-
33 ment of conviction and grant a new trial.

34 **“§ 3-11C7. Disposition of Criminal Charges**

35 “Nothing in this subchapter precludes the court from disposing of
36 the criminal charges pending against a defendant, at any time, upon
37 motion of the defendant or the attorney for the government or upon
38 its own motion, if the factual and legal issues involved can be resolved
39 without regard to the mental condition of the defendant.

1 **“§ 3-11C8. Civil Commitment**

2 **“(a) GENERAL.—**Any person who :

3 **“(1)** is in official detention under section 3-11C4 (Pretrial Com-
4 mitment of Incompetent Defendant) and who has been deter-
5 mined to be unlikely to regain competency within a reasonable
6 time shall be examined by the Secretary to determine whether,
7 by reason of mental illness or defect, failure to hospitalize would
8 create a likelihood of serious harm. If such defendant refuses to
9 submit to an examination, the Secretary shall petition the court
10 for an order for such examination ;

11 **“(2)** is in official detention under a sentence which is to expire
12 and who, in the opinion of the Attorney General, would create a
13 likelihood of serious harm by reason of mental illness or defect
14 unless hospitalized shall, upon the request of the Attorney Gen-
15 eral, be examined by the Secretary. Such examination shall be
16 held at least 90 days prior to the date of the offender’s mandatory
17 release from official detention ; or

18 **“(3)** is acquitted under section 1-3C2 (Mental Illness or De-
19 fect) and who, in the opinion of the attorney for the government
20 or the court, would create a likelihood of serious harm by reason
21 of mental illness or defect unless hospitalized shall, upon the re-
22 quest of the attorney for the government or the court, be examined
23 by the Secretary.

24 **“(b) DETENTION PENDING PROCEEDINGS.—**A person examined under
25 subsection (a) may be held in official detention pending the disposition
26 of proceedings under this section.

27 **“(c) PETITION.—**If, after an examination under subsection (a), the
28 Secretary finds that failure to hospitalize a person would create a like-
29 lihood of serious harm by reason of mental illness or defect, he shall
30 petition the court for a civil commitment of the person. The court shall
31 give notice of the petition to the person and his counsel and may
32 appoint a guardian ad litem for such person. If the examination is con-
33 ducted under subsection (a) (1) or (a) (3), the petition of the Secre-
34 tary, shall be filed with the court for the judicial district in which the
35 criminal charges were brought. If the examination is conducted under
36 subsection (a) (2), the petition shall be filed with the court for the
37 judicial district in which the examination is held.

38 **“(d) REFERRAL TO PANEL.—**As soon as practicable after notice is
39 given of the petition, the court shall refer such person to the panel for
40 examination. If the person is unable to provide his own psychiatrist,

1 the court may, upon its own motion or upon the request of counsel,
2 appoint an additional psychiatrist to conduct a separate examination.
3 The report of examination shall be submitted to the court, the Secre-
4 tary, and counsel for the person not later than 15 days after the person
5 was referred for examination.

6 “(e) HEARING.—If the report of the panel states that failure to
7 hospitalize the person would not create a likelihood of serious harm
8 by reason of mental illness or defect, the court may terminate the pro-
9 ceedings and dismiss the petition. If the proceedings are not termi-
10 nated, the court shall schedule a hearing which shall be held not more
11 than 30 days after the receipt of the panel report, except that the court
12 may set a later date upon a showing of good cause. The court shall give
13 notice of the hearing to the person, his counsel, the attorney for the
14 government, and the Secretary, and shall afford them an opportunity
15 to testify, present evidence, and confront adverse witnesses; the court
16 shall not be bound by the rules of evidence. If, after hearing, the court
17 finds that failure to hospitalize the person would create a likelihood
18 of serious harm by reason of mental illness or defect, it shall order
19 the person committed to official detention by the Secretary for care
20 and treatment for the period set forth in subsection (f).

21 “(f) DURATION OF COMMITMENT.—The commitment made under sub-
22 section (e) shall continue only during such time as the Secretary is not
23 able to find other suitable and available state, local, or private facilities
24 for the care and treatment of the person, or until such time as failure to
25 hospitalize the person would no longer create a likelihood of serious
26 harm by reason of mental illness or defect, whichever occurs first.

27 “(g) DISCHARGE OR CONTINUED COMMITMENT.—Whenever the Secre-
28 tary determines that a person committed to official detention under
29 subsection (e) no longer would create a likelihood of serious harm by
30 reason by mental illness or defect, the Secretary shall discharge such
31 person unconditionally. At least once each year of a commitment made
32 under subsection (e), the Secretary shall file a report with the court for
33 the judicial district in which such person is hospitalized, setting forth
34 the reasons why failure to continue to hospitalize the person would
35 create a likelihood of serious harm by reason of mental illness or defect.
36 The court shall give notice of this report to the person and his counsel.
37 The notice shall inform the person that he has a right to petition the
38 court within 30 days for a hearing on the need for continued commit-
39 ment. Upon such petition, the court shall, upon due notice, hold a hear-
40 ing within 30 days to determine if failure to continue to hospitalize the

1 person would create a likelihood of serious harm by reason of mental
 2 illness or defect. The person shall have the opportunity to testify, pre-
 3 sent evidence, and cross-examine witnesses; the court shall not be bound
 4 by the rules of evidence. If, after hearing, the court finds that failure
 5 to hospitalize the person would create a likelihood of serious harm by
 6 reason of mental illness or defect, it shall order the continuation of the
 7 commitment of the person to official detention by the Secretary for care
 8 and treatment for the period set forth in subsection (f).

9 **“Subchapter D.—Sentencing**

“Sec.

“3-11D1. Sentencing Recommendation of the Attorney for the Government.

“3-11D2. Psychiatric Examination.

“3-11D3. Effect of Presidential Remission.

10 **“§ 3-11D1. Sentencing Recommendation of the Attorney for the** 11 **Government**

12 “Upon the conviction of a defendant, the attorney for the govern-
 13 ment, having due regard to the character and circumstances of the
 14 offense and the history, character, and condition of the offender, the
 15 need to maintain respect for law and to reinforce the credibility of
 16 the deterrent factor of the law, the need to protect the community, the
 17 need of the offender for continuing supervision and assistance and the
 18 correctional resources available, shall make a sentencing recommenda-
 19 tion to the court in open court and shall set forth his reasons for such
 20 recommendation.

21 **“§ 3-11D2. Psychiatric Examination**

22 “When a person has been convicted, and the offender or the attorney
 23 for the government by motion, or the court on its own motion, avers
 24 that the offender is mentally ill, the court may cause the person to be
 25 referred to the panel of qualified psychiatrists established under sec-
 26 tion 3-11C2 (Panel and Examination) for examination as to his men-
 27 tal condition. The scope of an examination under this section shall be
 28 the mental condition of the offender. The report of this examination
 29 shall state the medical and other data upon which the opinion of the
 30 panel is based and shall make sentencing recommendations to the court
 31 based on such findings and opinion. The report shall be filed with the
 32 court, and copies given to the attorney for the government and to the
 33 offender or his counsel not later than 15 days after the offender was
 34 referred for examination.

35 “Upon receipt of the report of the panel, the court may hold a
 36 hearing, upon due notice, at which the report and all other recom-
 37 mendations as to disposition may be submitted by the parties.

1 **“§ 3-11D3. Effect of Presidential Remission**

2 “Whenever, by the judgment of a court or magistrate of the United
3 States, in criminal proceeding, a person is sentenced to two kinds
4 of punishment, the one a fine and the other imprisonment, the Presi-
5 dent’s remission in whole or in part of either kind shall not impair the
6 legal validity of the other kind, or of any portion of either kind which
7 is not remitted.

8 **“Subchapter E.—Appellate Review**

“Sec.

“3-11E1. Appeal by United States.

“3-11E2. Appeal from Conditions of Release.

“3-11E3. Review of Sentence.

9 **“§ 3-11E1. Appeal by United States**

10 “(a) **GENERAL.**—In a criminal case an appeal by the United States
11 shall lie to a court of appeals from a decision, judgment, or order
12 of a district court or magistrate dismissing an indictment or informa-
13 tion as to any one or more counts, except that no appeal shall lie where
14 the double jeopardy clause of the United States Constitution prohibits
15 further prosecution.

16 “(b) **EVIDENCE.**—An appeal by the United States shall lie to a
17 court of appeals from a decision or order of a court or magistrate sup-
18 pressing or excluding evidence or requiring the return of seized prop-
19 erty in a criminal proceeding, not made after the defendant has been
20 put in jeopardy and before the verdict or finding on an indictment or
21 information, if the attorney for the government certifies to the district
22 court or magistrate that the appeal is not taken for purposes of delay
23 and that the evidence is a substantial proof of a fact material in the
24 proceeding.

25 “(c) **INTERCEPTION OF PRIVATE COMMUNICATION.**—In addition
26 to any other right of appeal, the United States shall have the right
27 to appeal from an order granting a motion to suppress made under
28 section 3-10C5 (d) (Suppression of Evidence), or the denial of an
29 application for an order of approval of interception of a private com-
30 munication, if the attorney for the government certifies to the court or
31 other official granting such motion or denying such application that the
32 appeal is not taken for purposes of delay.

33 “(d) **TIME.**—The appeal in all such cases shall be taken within 30
34 days after the decision, judgment, or order has been rendered and shall
35 be diligently prosecuted.

36 “(e) **RELEASE.**—Pending the prosecution and determination of an ap-
37 peal under this section, the defendant shall be released in accordance
38 with rule.

1 **“§ 3-11E2. Appeal from Conditions of Release**

2 “(a) REVIEW.—A person who is detained, or whose release on a con-
3 dition after review of his application according to rule by a judicial
4 officer, other than a judge of the court having original jurisdiction over
5 the offense with which he is charged or a judge of a United States court
6 of appeals or a Justice of the Supreme Court, may move the court
7 having jurisdiction over the offense with which he is charged to amend
8 the order. Such a motion shall be determined promptly.

9 “(b) APPEAL.—In any case in which a person is detained after:

10 “(1) a court denies a motion under subsection (a) to amend
11 an order imposing conditions of release, or

12 “(2) conditions of release have been imposed or amended by a
13 judge of the court having original jurisdiction over the offense
14 charged,

15 an appeal may be taken to the court having appellate jurisdiction over
16 such court. Any order so appealed shall be affirmed if it is supported
17 by the proceedings below. If the order is not so supported, the court
18 may remand the case for a further hearing, or may, with or without
19 additional evidence, order the person released according to rule. Such
20 an appeal shall be determined promptly.

21 **“§ 3-11E3. Review of Sentence**

22 “(a) GENERAL.—With respect to the imposition or not, correction, or
23 reduction of a sentence of upper-range imprisonment for dangerous
24 special offenders, a review of the sentence on the record of the court
25 imposing sentence may be taken by the offender or the United States to
26 a court of appeals. Any review of the sentence taken by the United
27 States shall be taken at least five days before expiration of the time for
28 taking a review of the sentence or appeal of the conviction by the of-
29 fender and shall be diligently prosecuted. The court imposing sentence
30 may, with or without motion and notice, extend the time for taking a
31 review of the sentence for a period not to exceed thirty days from the
32 expiration of the time otherwise prescribed by law. The court shall not
33 extend the time for taking a review of the sentence by the United
34 States after the time has expired. A court extending the time for
35 taking a review of the sentence by the United States shall extend the
36 time for taking a review of the sentence or appeal of the conviction
37 by the offender for the same period. The taking of a review of the
38 sentence by the United States shall be deemed the taking of a review
39 of the sentence and an appeal of the conviction by the offender. Review
40 of the sentence shall include review of whether the procedure em-

1 ployed was lawful, the findings made were clearly erroneous, or the
 2 sentencing court's discretion was abused. The court of appeals on
 3 review of the sentence may, after considering the record, including
 4 the presentence report or reports, information submitted during the
 5 trial of such felony and the sentencing hearing, if any, and the find-
 6 ings and reasons of the sentencing court, if any, affirm the sentence,
 7 impose or direct the imposition of any sentence which the court impos-
 8 ing sentence could originally have imposed, or remand for further
 9 sentencing proceedings and imposition of sentence, except that a
 10 sentence may be made more severe only on review of the sentence
 11 taken by the United States and after hearing. Failure of the United
 12 States to take a review of the imposition of the sentence shall, upon
 13 review taken by the United States of the correction or reduction of
 14 the sentence, foreclose imposition of a sentence more severe than that
 15 previously imposed. Any withdrawal or dismissal of review of the
 16 sentence taken by the United States shall foreclose imposition of a
 17 sentence more severe than that reviewed but shall not otherwise fore-
 18 close the review of the sentence or the appeal of the conviction. The
 19 court of appeals shall state in writing the reasons for its disposition
 20 of the review of the sentence. Any review of the sentence taken by
 21 the United States may be dismissed on a showing of abuse of the
 22 right of the United States to take such review.

23 “(b) **TIME.**—The time for taking an appeal from a conviction for
 24 which sentence is imposed under section 1-4A1 (Authorized Sentence)
 25 of the code shall be measured from imposition of the original sentence.

26 **“Chapter 12.—CORRECTIONS**

“Subchapter

“A. General Provisions.

“B. Probation.

“C. Bureau of Corrections.

“D. Offenders.

“E. Federal Correctional Industries.

“F. Parole.

27 **“Subchapter A.—General Provisions**

“Sec.

“3-12A1. Definition of Terms.

28 **“§ 3-12A1. Definition of Terms**

29 “As used in this chapter, unless it is otherwise provided or a differ-
 30 ent meaning plainly is required :

31 “(1) ‘Bureau’ means the Bureau of Corrections;

32 “(2) ‘Commission’ means the Parole Commission;

33 “(3) ‘corporation’ means Federal Correctional Industries;

34 “(4) ‘Director’ means the Director of the Bureau of Correc-
 35 tions; and

1 “(5) ‘Treasury’ means the Treasury of the United States.

2 **“Subchapter B.—Probation**

 “Sec.

 “3-12B1. Duties of Probation Officers.

 “3-12B2. Duties of Administrative Office of United States Courts.

 “3-12B3. Transportation of Offenders.

3 **“§ 3-12B1. Duties of Probation Officers**

4 “Each probation officer shall:

5 “(a) instruct each offender under his supervision regard-
6 ing the conditions of probation on which he has been released;

7 “(b) keep informed as to the conduct and condition of each
8 offender under his supervision and report his conduct and
9 condition to the court which placed such person on probation;

10 “(c) use all suitable methods, not inconsistent with the con-
11 ditions imposed by the court, to aid each offender under his
12 supervision and to bring about improvements in his conduct and
13 condition;

14 “(d) keep records of his work; keep accurate and complete ac-
15 counts of all money collected from persons under his supervision,
16 give receipts for such money, and make at least monthly returns
17 of such money and receipts; make such reports to the Director of
18 the Administrative Office of the United States Courts as he may
19 at any time require; and

20 “(e) perform such other duties as the court may direct.

21 **“§ 3-12B2. Duties of Administrative Office of United States Courts**

22 “The Director of the Administrative Office of the United States
23 Courts, or his authorized agent, shall:

24 “(a) investigate the work of the probation officers and make rec-
25 ommendations concerning such officers to the respective judges and
26 concerning the probation system to the Attorney General, the Ju-
27 dicial Conference of the United States, and the Congress;

28 “(b) have access to the records of all probation officers;

29 “(c) prescribe forms for records and statistics to be kept by the
30 probation officers and formulate general rules for the proper con-
31 duct of probation work;

32 “(d) endeavor by all suitable means to promote the efficient ad-
33 ministration of the probation system and the enforcement of the
34 probation laws in all courts of the United States;

35 “(e) fix, under the supervision and direction of the Judicial
36 Conference of the United States, the salaries of probation officers
37 and provide for their necessary expenses including clerical serv-
38 ice and travel expenses; and

“(f) incorporate in his annual report a statement concerning the operation of the probation system in the courts of the United States.

“§ 3-12B3. Transportation of Offenders

“A court of the United States, when placing an offender on probation, may direct the United States marshal to furnish such offender with transportation to the place to which he is required to proceed as a condition of probation and, in addition, may also direct the marshal to furnish him with an amount of money, not to exceed such amount as the Attorney General may prescribe, for subsistence expenses to his destination. In such event, such expenses shall be paid by the marshal.

“Subchapter C.—Bureau of Corrections

“Sec.

“3-12C1. Organization, Director, and Responsibilities.

“3-12C2. Nature of Correctional Facilities.

“3-12C3. Contracting.

“3-12C4. Federal Institutions in States Without Appropriate Facilities.

“3-12C5. Appropriations and Acquisitions.

“§ 3-12C1. Organization, Director, and Responsibilities

“(a) ESTABLISHMENT.—The Bureau of Prisons, previously established in the Department of Justice, shall, on and after the effective date of this section, be known as the ‘Bureau of Corrections’ and shall be in the charge of a Director serving directly under the Attorney General.

“(b) DIRECTOR.—The President shall appoint, by and with the advice and consent of the Senate, the Director. This provision shall be of no force and effect as to the person who is Director on the effective date of this section. The Director shall, at the time of his appointment, be qualified by educational background, professional experience in correctional administration or planning or comparable experience in a related field, and by demonstrated interest and knowledge of criminal justice administration and the custody and rehabilitation of offenders.

“(c) CONTROL.—The control and management of Federal correctional facilities, except military or naval facilities, shall be vested in the Bureau of Corrections.

“(d) DUTIES.—The Bureau of Corrections:

“(1) shall promulgate rules for the governance of Federal correctional facilities and shall appoint all necessary officers and employees, in accordance with the civil-service laws, the Classification Act, as amended, and applicable regulations, and may accept voluntary and uncompensated services from any person notwithstanding any other provision;

1 “(2) shall have charge of the management and regulation of
2 all Federal correctional facilities;

3 “(3) shall provide facilities and shall provide for the safe-
4 keeping, care, correction, and subsistence of all persons charged
5 with or convicted of offenses or held as witnesses or otherwise,
6 except persons confined in military or naval correctional facilities;

7 “(4) may establish and conduct industries, farms, and other
8 activities; classify offenders; and provide for the proper govern-
9 ance, discipline, treatment, rehabilitation, reformation, and em-
10 ployment placement of offenders;

11 “(5) may, with the approval of the Attorney General, establish,
12 equip, and maintain camps upon sites selected by the Director
13 and may designate such camps as correctional facilities and places
14 for the official detention of offenders. No such camp may be estab-
15 lished upon an Indian reservation. As part of the expense of op-
16 erating such camps, the Director is authorized to pay offenders
17 or their dependents pecuniary earnings, under such rules and
18 regulations as may be prescribed. The expense of operating such
19 camps and of transferring and maintaining offenders under para-
20 graph (6) shall be paid from the appropriation ‘support of United
21 States prisoners’, which may, in the discretion of the Attorney
22 General, be reimbursed for such expense; and

23 “(6) may, with the approval of the Attorney General, make
24 available to the heads of the several departments, to the states,
25 and to political subdivisions of the states the services of offenders
26 in Federal correctional facilities upon mutually agreed upon
27 rates, terms, and conditions for constructing or repairing roads
28 and other public facilities; clearing, maintaining, and reforesting
29 public lands; building levees; constructing or repairing public
30 works financed in whole or in part by Federal funds; or working
31 on a project in the public interest.

32 **“§ 3-12C2. Character of Correctional Facilities**

33 “(a) PLANNING.—The Federal correctional facilities shall be so
34 planned and limited in size as to facilitate the development of an in-
35 tegrated system which will assure the proper classification and segre-
36 gation of Federal offenders according to the character of the offense
37 committed, the character and mental condition of the offender, and
38 such other factors as should be considered in providing an individual-
39 ized system of discipline, care, and treatment of the persons commit-
40 ted to such facilities.

1 “(b) **YOUTHFUL OFFENDERS TREATMENT.**—The Director, with the
2 approval of the Attorney General, shall set aside and adapt institutions
3 and agencies for the specialized treatment of youthful offenders. In-
4 sofar as practical, such youthful offenders shall be segregated accord-
5 ing to their needs for treatment. Treatment shall be afforded in insti-
6 tutions of maximum security, medium security, or minimum security,
7 including schools, medical facilities, farms, camps, community pro-
8 grams, and other agencies that will provide the needed varieties of
9 treatment.

10 “(c) **SPECIALIZED TREATMENT.**—The Director, with the approval of
11 the Attorney General, shall provide within the correctional facilities,
12 or set aside separate institutions and agencies, for the specialized
13 treatment of narcotics addicts, drug abusers, and alcoholics.

14 “(d) **MEDICAL SERVICES.**—The Secretary of Health, Education, and
15 Welfare, upon the request of the Director, with the approval of the
16 Attorney General, shall detail regular and reserve commissioned offi-
17 cers of the Public Health Service, pharmacists, acting assistant sur-
18 geons, and other employees of the Public Health Service to the De-
19 partment of Justice for the purpose of supervising and furnishing
20 medical, psychiatric, and other technical and scientific services to the
21 Federal correctional facilities. The compensation, allowances, and ex-
22 penses of such personnel may be paid from :

23 “(1) applicable appropriations of the Public Health Service
24 subject to reimbursement from applicable appropriations of the
25 Department of Justice; or

26 “(2) allotments of funds and transfers of credit from the Attor-
27 ney General to the Public Health Service in such amounts as are
28 available and necessary

29 in accordance with the laws and regulations governing the personnel
30 of the Public Health Service. The Director, with the approval of the
31 Attorney General, may directly appoint health personnel or contract
32 with any public or private agency or organization or any person to
33 provide medical services to Federal correctional facilities or Fed-
34 eral offenders.

35 **“§ 3-12C3. Contracting**

36 “(a) **FOR FEDERAL OFFENDERS.**—The Director, with the approval
37 of the Attorney General, may contract with the proper authorities
38 of any state or political subdivision of a state for the official detention
39 of Federal offenders, including safekeeping, care, subsistence, treat-
40 ment, rehabilitation, and employment, or with private organizations

1 for services to be provided or programs to be offered to Federal
2 offenders. Factors to be taken into account in determining the rates
3 to be paid under such contracts include the character of the physical
4 facilities and the quality of the services.

5 “(b) FOR STATE OFFENDERS.—If he finds that proper and adequate
6 treatment facilities and personnel are available, the Director, with the
7 approval of the Attorney General, may contract with the proper au-
8 thorities of any state or political subdivision of a state for the official
9 detention, including safekeeping, care, subsistence, treatment, rehabili-
10 tation, and employment, in Federal correctional facilities, of persons
11 convicted of criminal offenses in the courts of such state. Each such
12 contract shall provide for the United States to be reimbursed for the
13 services rendered and the costs incurred. Funds received under such
14 contracts shall be deposited in the Treasury to the credit of the appro-
15 priation or appropriations from which the payments for such services
16 were originally made. Except as otherwise provided in the contract,
17 a person committed to the official detention of the United States under
18 this subsection shall be subject to all the provisions of law applicable to
19 Federal offenders which are not inconsistent with his sentence or the
20 laws of the state in which such sentence was imposed.

21 “(c) AFTERCARE.—The Director, with the approval of the Attorney
22 General, may contract with any appropriate person for supervisory
23 aftercare of a released offender for the purpose of providing facilities,
24 services, or programs not otherwise available.

25 **“§ 3-12C4. Federal Institutions in States Without Appropriate**
26 **Facilities**

27 “If, for any reason, there is not a valid contract with any state or
28 political subdivision of a state for the official detention of Federal
29 offenders, and if there are no suitable or sufficient facilities available
30 at reasonable cost, the Director, with the approval of the Attorney
31 General, may select a site within or convenient to such state or political
32 subdivision and erect a correctional facility. Such facility may be
33 used for the official detention of persons held under the authority of
34 this code or any other Act of Congress and of such other persons as,
35 in the opinion of the Director, are proper subjects for official detention
36 in such facilities.

37 **“§ 3-12C5. Appropriations and Acquisitions**

38 “(a) APPROPRIATIONS FOR SITES AND BUILDINGS.—There are author-
39 ized to be appropriated such sums as may be necessary to enable the
40 Director to lease or acquire sites, prepare plans, secure options, make

preliminary surveys or sketches, and erect necessary buildings in connection with the carrying out of the duties of the Bureau.

“(b) **ACQUISITION OF ADDITIONAL LAND.**—The Director, with the approval of the Attorney General, may acquire land adjacent to or in the vicinity of a Federal correctional facility if he considers the additional land essential to the protection of the health or safety of the offenders in the facility.

“(c) **CASH COLLECTIONS.**—Collections in cash for meals, laundry, barber service, uniform equipment, and other property and services for which payment is made originally from appropriations for the maintenance and operation of Federal correctional facilities shall be deposited in the Treasury to the credit of the appropriation available for such property and services at the time such collections are made.

“Subchapter D.—Offenders

“Sec.

“3-12D1. Official Detention.

“3-12D2. Transfer to State Facility.

“3-12D3. Transportation of Offenders.

“3-12D4. Discharge.

“§ 3-12D1. Official Detention

“(a) **PLACE.**—The Bureau of Corrections may designate, as a place of official detention for an offender, any available, suitable, and appropriate correctional facility maintained by the Federal government within or without the judicial district in which the person was convicted.

“(b) **ORDER.**—Whenever a person is placed in the official detention of a warden, sheriff, or jailer under a writ, warrant or other order, a copy of the order shall be delivered to such officer as his authority to hold the person. The original order shall be returned to the proper court or officer, with the officer’s return endorsed on such order.

“(c) **EXTENSION OF LIMITS.**—The Bureau may extend the limits of the place of official detention of an offender as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to:

“(1) visit a specifically designated place or places for a period not to exceed thirty days. Such an extension of limits may be granted for:

“(i) a visit to a dying relative;

“(ii) attendance at the funeral of a relative;

“(iii) the obtaining of medical services not otherwise available;

“(iv) the contacting of prospective employers;

1 “(v) the preservation or reestablishment of family or com-
2 munity ties; or

3 “(vi) any other substantial correctional reason consistent
4 with the interest of justice; or

5 “(2) work at paid employment or participate in a training or
6 educational program in the community on a voluntary basis while
7 continuing in official detention at the same correctional facility,
8 provided that:

9 “(i) representatives of local union central bodies or similar
10 labor union organizations are consulted;

11 “(ii) such paid employment will not result in the displace-
12 ment of employed workers, or be applied in skills, crafts, or
13 trades in which there is a surplus of available gainful labor
14 in the locality, or impair existing contracts for services; and

15 “(iii) the rates of pay and other conditions of employment
16 will not be less than those paid or provided for work of sim-
17 ilar nature in the locality in which the work is to be performed.

18 “An offender authorized to work at paid employment in the
19 community under this paragraph may be required to pay, and the
20 Bureau is authorized to collect, such costs incident to the offend-
21 er’s official detention as the Bureau deems appropriate and rea-
22 sonable. Collections shall be deposited in the Treasury to the credit
23 of the appropriation available for such costs at the time such
24 collections are made.

25 “(d) **EXPENSES.**—The expenses attendant upon the official detention
26 of persons arrested or committed under the laws of the United States,
27 as well as upon the execution of any sentence of a court of the United
28 States respecting such persons, shall be paid out of the Treasury in
29 the manner provided by Federal statute, or a rule, regulation, or order
30 issued under such statute.

31 “(e) **DEFINITION.**—As used in this section, ‘relative’ means a spouse,
32 child, including step-child, adopted child or child as to whom the of-
33 fender, though not a natural parent, has acted in the place of a parent,
34 parent, including a parent who, though not a natural parent, has acted
35 in the place of a parent, brother, or sister.

36 **“§ 3-12D2. Transfer to State Facility**

37 “The Attorney General shall cause a Federal offender who has been
38 indicted, informed against, or convicted of a felony in a court of record
39 of any state to be transferred to a penal or correctional institution
40 within such state prior to his release from a Federal correctional
41 facility if:

1 “(a) he finds such a transfer to be in the public interest;

2 “(b) such transfer has been requested by the Governor or the
3 executive authority of the state; and

4 “(c) the state has presented to the Attorney General a certified
5 copy of such indictment, information, or judgment of conviction.

6 “If more than one request is presented in respect to any Federal of-
7 fender, the Attorney General shall determine which request should
8 receive preference. The expense of personnel and transportation in-
9 curred shall be chargeable to the appropriation for the ‘support of
10 United States prisoners’.

11 “This section shall not limit the authority of the Director, with the
12 approval of the Attorney General, to transfer prisoners under other
13 provisions of law.

14 **“§ 3-12D3. Transportation of Offenders**

15 “Offenders shall be transported by agents designated by the Director
16 or his authorized representative, with the approval of the Attorney
17 General. The reasonable expense of transportation, necessary sub-
18 sistence, and hire and transportation of guards and agents shall be
19 paid by the Director, with the approval of the Attorney General, from
20 such appropriation for the Department of Justice as the Attorney
21 General shall direct. Upon conviction by a consular court or court
22 martial, the offender shall be transported from such court to the
23 place of confinement by agents of the Department of State or Depart-
24 ment of Defense, as the case may be, the expense to be paid out of the
25 Treasury in the manner provided by law.

26 **“§ 3-12D4. Discharge**

27 “(a) DISCHARGE OF ARRESTED BUT UNCONVICTED PERSON.—A court
28 of the United States may, in its discretion, direct the United States
29 marshal for the judicial district to furnish subsistence and trans-
30 portation to the place of arrest or to the place of bona fide residence,
31 under a regulation promulgated by the Director, with the approval of
32 the Attorney General, to the following persons upon their release from
33 official detention :

34 “(1) a person arrested on a charge of violating any Federal law
35 but not indicted or informed against;

36 “(2) a person indicted or informed against on a charge of violat-
37 ing any Federal law but not convicted;

38 “(3) a person not admitted to bail or released on conditions; or

39 “(4) a person held as a material witness.

“(b) **DATE OF DISCHARGE OF OFFENDER.**—If an offender, following the expiration of his term of imprisonment, is eligible for release on a date which falls upon a Saturday, a Sunday, or on a Monday which is a legal holiday at the place of official detention, such person may be released at the discretion of the superintendent, warden, or keeper on the preceding Friday. If such release date falls on a holiday which falls other than on a Saturday, Sunday, or Monday, such person may be released at the discretion of the superintendent, warden, or keeper on the day preceding such holiday.

“(c) **TRANSPORTATION AND FUNDS UPON DISCHARGE OF OFFENDER.**—A Federal offender shall, upon discharge from imprisonment or release on parole, be furnished with transportation to the place of conviction, to his bona fide residence within the United States, or to such place within the United States as may be authorized by the Director, with the approval of the Attorney General. Such person shall also be furnished with:

“(1) suitable clothing, in the discretion of the Director, with the approval of the Attorney General; and

“(2) such amount of money, in the discretion of the Director, with the approval of the Attorney General.

“Subchapter E.—Federal Correctional Industries

“Sec.

“3-12E1. Organization.

“3-12E2. Administration.

“3-12E3. Purchase of Goods and Services of Correctional Industries.

“3-12E4. Correctional Industries Fund.

“§ 3-12E1. Organization

“(a) **ESTABLISHMENT.**—‘Federal Prison Industries,’ previously established as a government corporation of the District of Columbia, shall, on and after the effective date of this section, be known as ‘Federal Correctional Industries’ and shall be administered by a board of directors.

“(b) **BOARD OF DIRECTORS.**—The board of directors of the corporation shall consist of six persons who shall be appointed by the President to serve at his will and without compensation. The directors shall be representative of:

“(1) industry;

“(2) labor;

“(3) agriculture;

“(4) retailers and consumers;

“(5) Secretary of Defense; and

“(6) Attorney General.

1 “(c) REPORT TO CONGRESS.—The board of directors of the corpora-
2 tion shall make annual reports to Congress on the conduct of the
3 business of the corporation and on the condition of its funds.

4 “(d) ENFORCEMENT.—Upon any failure of the Board to act, the
5 Attorney General shall not be limited in carrying out the duties
6 conferred upon him by law.

7 **“§ 3-12E2. Administration**

8 “(a) SCOPE OF OPERATION.—The corporation shall determine in
9 what manner and to what extent industries shall be carried on in Fed-
10 eral correctional facilities, for the production of goods and services
11 for consumption in such facilities or for sale to government agencies.
12 Such industries may be located either within the precincts of an exist-
13 ing Federal correctional facility or in a convenient locality where
14 property may be obtained by lease, purchase, or other arrangement.
15 No industry established under this subchapter shall be operated in
16 such a manner as to curtail the production of any existing arsenal,
17 navy yard, or other Federal government workshop. Goods and services
18 produced by such industries may not be sold to the public in competi-
19 tion with private enterprise, unless the Secretary of Commerce certifies
20 to the Attorney General that private enterprise would not be harmed.

21 “(b) DIVERSIFICATION.—The board of directors of the corporation
22 is authorized, where appropriate, to provide employment for offenders
23 in Federal correctional facilities, to diversify prison operations so
24 far as practicable, to operate in such a manner that no single private
25 industry is forced to bear an undue burden of competition from the
26 products of its industries, and to reduce to a minimum competition
27 with private industry or free labor.

28 “(c) VOCATIONAL TRAINING.—The board of directors of the cor-
29 poration may provide for the vocational training of qualified offenders
30 without regard to their industrial or other assignments. Such forms
31 of employment shall be provided as will give offenders a maximum
32 opportunity to acquire a knowledge and skill in trades and occupa-
33 tions which will provide them with a means of earning a livelihood
34 upon release.

35 “(d) APPLICATION TO DEPARTMENT OF DEFENSE.—(1) The provi-
36 sions of this subchapter shall apply to the employment and training
37 of offenders convicted by general courts martial and confined in any
38 facility under the jurisdiction of the Department of Defense, to the
39 extent and under terms and conditions agreed upon by the Secretary of

1 Defense, the Attorney General, and the board of directors of the
2 corporation.

3 “(2) Any department or agency of the Department of Defense may,
4 without exchange of funds, transfer to the corporation any property
5 or equipment suitable for use in performing the functions and duties
6 covered by agreement entered into under paragraph (1).

7 “(e) APPLICATION TO DISTRICT OF COLUMBIA.—(1) The provisions
8 of this subchapter shall apply to the employment and training of of-
9 fenders confined in a correctional facility under the direction of the
10 Commissioner of the District of Columbia to the extent and under
11 terms and conditions agreed upon by the Commissioner, the Attorney
12 General, and the board of directors of the corporation.

13 “(2) The Commissioner of the District of Columbia may, without
14 exchange of funds, transfer to the corporation any property or equip-
15 ment suitable for use in performing the functions and duties covered
16 by an agreement entered into under paragraph (1).

17 “(3) Nothing in this subchapter affects the provisions of the Act
18 approved October 3, 1964 (D.C. Code, sections 24-451 et seq.), en-
19 titled ‘An Act to establish in the Treasury a correctional industries
20 fund for the government of the District of Columbia, and for other
21 purposes.’

22 **“§ 3-12E3. Purchase of Goods and Services of Correctional**
23 **Industries**

24 “Federal government agencies shall purchase the goods and serv-
25 ices of the industries authorized by this subchapter which meet their
26 requirements and which are available at prices that do not exceed
27 current market price. Disputes as to the price, quality, character, or
28 suitability of such goods and services shall be arbitrated by a board
29 consisting of the Comptroller General of the United States, the Ad-
30 ministrator of General Services, and the Director of the Office of
31 Management and Budget, or their representatives. The decision of
32 such board shall be final and binding on the parties.

33 **“§ 3-12E4. Correctional Industries Fund**

34 “(a) FUND.—All moneys under the control of the corporation,
35 received from the sale of the goods, services, or by-products of in-
36 dustries under such corporation, or received for the services of Federal
37 offenders, shall be deposited in the Treasury to the credit of the Cor-
38 rectional Industrial Fund and withdrawn from such fund only under
39 accountable warrants or certificates of settlement issued by the General
40 Accounting Office. All valid claims and obligations payable out of such
41 fund shall be assumed by the corporation.

“(b) **EMPLOYMENT OF ASSETS.**—The corporation, in accordance with the laws generally applicable to the expenditures of the several departments and establishments of the Federal government, is authorized to employ the fund, and any earnings that may accrue to the corporation:

“(1) as operating capital in performing the duties imposed by this subchapter;

“(2) in the repair, alteration, erection, and maintenance of industrial buildings and equipment;

“(3) in providing educational and vocational training programs for offenders without regard to their industrial or other assignments; and

“(4) in paying compensation, under rules and regulations promulgated by the Director, with the approval of the Attorney General:

“(i) to offenders employed in any such industry;

“(ii) to offenders performing meritorious or outstanding services in correctional facility operations; and

“(iii) to offenders or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the correctional facility where confined, except that compensation shall not be paid in an amount greater than that provided in the Federal Employees’ Compensation Act.

“(c) **ACCOUNTING.**—Accounts of all receipts and disbursements of the corporation shall be rendered to the General Accounting Office for settlement and adjustment, as required by the Comptroller General. Such accounting shall include all fiscal transactions of the corporation, whether involving appropriated moneys, capital, or receipts from other sources.

“Subchapter F.—Parole

“Sec.

“3-12F1. Parole Commission.

“3-12F2. Duties of Probation Officers As to Parole.

“3-12F3. Parole.

“3-12F4. Conditions of Parole.

“3-12F5. Duration of Parole.

“3-12F6. Response to Noncompliance With Condition of Parole.

“3-12F7. Finality of Parole Determinations.

“§ 3-12F1. Parole Commission

“(a) **ESTABLISHMENT.**—The Board of Parole, previously established in the Department of Justice, shall, on and after the effective date of this section, be known as the ‘Parole Commission’ and shall be an inde-

pendent agency, having final authority in construing and administering all Federal parole statutes with a separate budget, in all Federal parole statutes with a separate budget, in the Department of Justice. The Commission shall be composed of not less than five, but not more than nine members, who shall be appointed by the President, by and with the advice and consent of the Senate. The disciplines of the behavioral sciences at the doctoral level and of law and corrections shall be represented on the Commission. The term of office of a Parole Commissioner shall be ten years except that the term of a person appointed to fill a vacancy shall expire ten years from the date upon which such person was appointed and qualified. A Commissioner shall be eligible to be reappointed for one additional term. Upon the expiration of a term of office of any member, such member shall continue to act until a successor has been appointed and qualified. The President shall from time to time designate from among the Parole Commissioners one to serve as Chairman. No more than a majority plus one of the Commissioners, excluding the Chairman, shall be of the same political party.

“(b) CHAIRMAN.—The Chairman shall :

“(1) preside at meetings of the National Parole Commissioners ;

“(2) vote on any matter pending in the absence of any other Parole Commissioner from a meeting, if there is a vacancy on the Commission or if there is a tie vote ;

“(3) convene and preside, at least twice annually, at a meeting of the Regional Parole Examiners, for the purpose of considering, promulgating, and overseeing a national parole policy ; and

“(4) perform such administrative and other duties and responsibilities as are necessary to carry out the provisions of this subchapter.

1 “(c) NATIONAL PAROLE COMMISSIONERS.—The National Parole Com-
2 missioners, by majority vote, shall :

3 “(1) promulgate such regulations, adopted in accordance with
4 section 553, title 5, United States Code, as are necessary to carry
5 out the provisions of this subchapter ;

6 “(2) have authority to accept, reject, or modify any decision of
7 of any Regional Parole Examiner upon motion of any National
8 Parole Commissioner ;

9 “(3) give reasons in detail for their decisions in any appropriate
10 case, including the review of any decision of any region ;

11 “(4) transfer to themselves the authority to grant, modify, or
12 revoke an order paroling an offender when the interest of justice
13 so requires ;

14 “(5) create such regions as are necessary to carry out the pro-
15 visions of this subchapter, but in no event less than five ;

16 “(6) provide that there be reasonable balance in the workload
17 of each region ;

18 “(7) appoint, fix the compensation of, and assign, Parole Exam-
19 iners, who are empowered to conduct appearances, make recom-
20 mendations, act upon parole applications, and perform such other
21 duties as will aid the Commission to carry out the provisions of
22 this subchapter ; and

23 “(8) provide for research which shall include :

24 “(i) the systematic collection of the data obtained from
25 studies, research, and the empirical experience of public and
26 private agencies concerning the parole process and parolees ;

27 “(ii) the dissemination of pertinent data and studies to
28 persons concerned with the parole process and parolees ;

29 “(iii) the publishing of data concerning parole process and
30 offenders ; and

31 “(9) appoint and fix the compensation of such other employees,
32 obtain materials and services, and exercise such other powers as
33 are necessary to carry out the provisions of this subchapter.

34 “(d) REGIONAL PAROLE EXAMINER.—A Regional Parole Examiner,
35 with the concurrence of one other examiner assigned to such region,
36 after sitting in panel, and subject to subsection (c), shall be author-
37 ized in behalf of the Commission to :

38 “(1) grant or deny any application or recommendation to parole
39 or reparole an offender ;

40 “(2) specify reasonable conditions of any order granting
41 parole ;

1 “(3) modify, enlarge, or revoke any order paroling an offender;

2 “(4) establish the maximum length of time which an offender
3 whose parole has been revoked shall be required to serve;

4 “(5) reparole any offender whose parole has been revoked and
5 who is not otherwise ineligible for parole;

6 “(6) discharge any offender from supervision or release him
7 from one or more of the conditions of parole at any time after the
8 expiration of one year after release on parole, if warranted by
9 the conduct of the offender and the interest of justice; except, in
10 those cases in which the time remaining to be served is less than one
11 year, in which case, such actions may be taken at any time; and

12 “(7) exercise such other powers as are necessary to carry out
13 the provisions of this subchapter.

14 “(e) **POWERS.**—(1) The Commission shall have the power to issue
15 subpoenas to require the attendance and testimony of witnesses and
16 the production of evidence that relates to any matter with respect
17 to which the Commission is empowered to make a determination under
18 this subchapter. Any member of the Commission or Regional Parole
19 Examiner may administer oaths to witnesses appearing before the
20 Commission or before a Regional Parole Panel. Subpoenas may be
21 issued under the signature of the chairman or any duly designated
22 commissioner and may be served by any person designated by the
23 chairman or such commissioner. Witnesses summoned before the Com-
24 mission or before a Regional Parole Panel shall be paid the same fees
25 and mileage that are paid witnesses in the courts of the United States.
26 Such attendance of witnesses and production of evidence may be
27 required from any place in the United States to any designated place
28 of parole appearance.

29 “(2) If a person refuses to obey such a subpoena, the Commission
30 may petition a court of the United States for the judicial district in
31 which such parole proceeding is being conducted or in which such
32 person resides or carries on business to require such person to attend,
33 testify, and produce evidence. The court may issue an order requiring
34 such person to appear before the Commission or a member or of-
35 ficer designated by the Commission, there to produce information or
36 a thing, if so ordered, or to give testimony touching the matter under
37 investigation or in question. Failure to obey such an order is punishable
38 by such court as a contempt. All process in such a case may be served in
39 the judicial district in which such person resides, does business, or
40 may be found.

1 “(3) The Commission shall be ‘an agency of the United States’
2 under section 3-10D1(1) (Definition of Terms) for the purpose of
3 granting immunity to witnesses.

4 “(f) **TRANSITION.**—Upon the effective date of this section, each
5 person holding office as a member of the Board of Parole on the date
6 immediately preceding such effective date shall be a Commissioner and
7 shall be entitled to serve as such for the remainder of the term for
8 which he was appointed as a member of such Board of Parole. All
9 powers, duties, and functions of such Board of Parole shall, on such
10 effective date, be vested in the Commission and shall, on and after such
11 date, be carried out by the Commission in accordance with the provi-
12 sions of this subchapter.

13 “(g) **RULE MAKING.**—In addition to the power set forth in section
14 3-12F1(c) (1) (National Parole Commissioners) the Parole Commis-
15 sion shall have the power to prescribe, from time to time, rules, con-
16 sistent with generally accepted standards of due process, with respect
17 to any or all parole proceedings.

18 “(h) **PROCEDURE FOR RULE MAKING.**—General notice of proposed
19 rule making under subsection (g) shall be published by the Parole
20 Commission in the Federal Register. The notice shall include:

21 “(1) a statement of the time, place, and character of the public
22 rule making proceedings; and

23 “(2) either the terms and substance of the proposed rule or a
24 description of the subjects and issues involved.

25 After notice, the Commission shall give interested persons, including
26 paroled and incarcerated offenders, an opportunity to participate
27 in the rule making through submission of written data, views, or
28 arguments with or without opportunity for oral presentation. Such
29 rules shall not take effect until they have been reported to Congress
30 by the Chairman at or after the beginning of a regular session
31 of Congress but not later than the first day of May, and until the
32 expiration of ninety days after which they have been thus reported.

33 **“§ 3-12F2. Duties of Probation Officers As to Parole**

34 **“Each probation officer shall:**

35 “(a) instruct each offender under his supervision regarding the
36 conditions of parole on which he has been released;

37 “(b) keep informed as to the conduct and condition of each
38 offender under his supervision and report on his conduct and con-
39 dition to the Commission;

40 “(c) use all suitable methods, not inconsistent with the condi-
41 tions imposed by the Commission, to aid each offender under his

1 supervision and to bring about improvements in his conduct and
2 condition;

3 “(d) keep records of his work; keep accurate and complete ac-
4 counts of all money collected from persons under his supervision,
5 give receipts for such money, and make at least monthly returns
6 of such money and receipts; make such reports to the Commis-
7 sion and to the Director of the Administrative Office of the United
8 States Courts as may be required;

9 “(e) perform such other duties as the Commission may direct;
10 and

11 “(f) perform such other duties with respect to offenders on
12 parole as the Attorney General shall request.

13 **“§ 3-12F3. Parole**

14 “(a) **AUTHORIZATION.**—Each offender sentenced to a term of im-
15 prisonment shall be eligible for release on parole upon completion of
16 the service of any minimum term or, if there is no minimum, at any
17 time, subject to the eligibility regulations of the Commission.

18 “(b) **MANDATORY RELEASE SUPERVISION.**—Each offender sentenced
19 to a maximum term of imprisonment in excess of 10 years shall be
20 released subject to parole supervision at least 2 years prior to the
21 expiration of such maximum term. Each offender sentenced to a maxi-
22 mum term of imprisonment in excess of 5 years shall be released sub-
23 ject to parole supervision at least 1 year prior to the expiration of such
24 maximum term.

25 “(c) **PREPARATION FOR PAROLE HEARING.**—Each offender in advance
26 of his parole hearing before the Commission shall be requested to pre-
27 pare a parole plan, setting forth the manner of life he intends to lead
28 if released on parole, together with any other information he may
29 wish to present to the Commission. The institutional staff shall render
30 reasonable aid to the offender in the preparation of his plan and in
31 securing information for submission to the Commission. If the offender
32 is indigent, counsel shall be furnished.

33 “(d) **STUDY.**—In any case in which a term of imprisonment of more
34 than one year is imposed, the Director, under regulations promulgated
35 with the approval of the Attorney General, shall cause a complete
36 study to be made of the offender and shall furnish to the Commission
37 a summary report together with any recommendations which, in his
38 opinion, would be helpful in determining the suitability of the offender
39 for parole. In addition, the Bureau shall furnish to the Commission
40 prior to its determining whether an offender shall be released on
41 parole:

1 “(1) a report by the institutional staff, relating to the offender’s
2 personality, social history, and adjustment to authority, includ-
3 ing the staff recommendations, if any, as to disposition and the
4 recommendation, if any, of the appropriate probation officer;

5 “(2) all official reports of his prior delinquency or criminal
6 record, including reports and records of earlier probation and
7 parole experiences, if any;

8 “(3) a copy of any presentence commitment or presentence
9 investigation report which was submitted to the court which
10 sentenced the offender;

11 “(4) recommendations as to parole, if any, made at the time of
12 sentencing by the court, the attorney for the government or the
13 probation officer;

14 “(5) reports of any physical and mental examinations of the
15 offender;

16 “(6) any relevant information which may be submitted by the
17 offender, the victim of the offense for which he is imprisoned, or
18 by other persons; and

19 “(7) such other information as may be available.

20 “(e) STANDARDS FOR RELEASE ON PAROLE.—In determining whether
21 an offender shall be released on parole, and if so, whether under strict
22 or limited supervision, the Commission, having due regard to the
23 character and circumstances of the offense and the history, character,
24 and condition of the offender, shall be guided by the need to maintain
25 respect for law and to reinforce the credibility of the deterrent factor
26 of the law, the need to protect the community, the need of the offender
27 for continuing supervision and assistance, and the available resources
28 of the Federal probation service.

29 “(f) FACTORS.—The following factors, where relevant and taken in
30 context, are proper for consideration by the Commission in deter-
31 mining whether to release an offender on parole under close or limited
32 supervision:

33 “(1) whether the offender’s parole plan is adequate;

34 “(2) whether the offender has a history of prior delinquency
35 or criminal activity, or has led a law-abiding life for a substantial
36 period of time before the commission of the present offense;

37 “(3) whether the offender’s criminal conduct was the result of
38 circumstances unlikely to recur;

39 “(4) whether the history, character, and attitudes of the offender
40 indicate that he is unlikely to commit another offense;

1 “(5) whether the offender is particularly likely to respond
2 affirmatively to parole;

3 “(6) whether continued imprisonment of the offender would
4 entail excessive hardship to him or to his dependents;

5 “(7) whether the offender is elderly or in poor health;

6 “(8) whether the offender abused a position of trust or of public
7 responsibility;

8 “(9) whether the offender has responded affirmatively to official
9 detention in the correctional facility or facilities, including
10 whether he has taken advantage of the opportunities for self-
11 improvement afforded him;

12 “(10) whether the offender responded affirmatively during any
13 previous experience on probation or parole;

14 “(11) whether the offender has marketable occupational skills
15 and training and reasonable employment prospects;

16 “(12) whether the offender has a family or relatives who dis-
17 play an interest in him and whether he has other associations in
18 the community;

19 “(13) whether there has been any apparent development since
20 the date of sentencing in the offender’s maturity, stability, sense of
21 responsibility, and personality which may promote or hinder his
22 conformity to law;

23 “(14) whether the offender is able and ready to assume the
24 obligations and undertake the responsibilities of release;

25 “(15) whether release on parole would depreciate the serious-
26 ness of the offender’s offense or promote disrespect for law; or

27 “(16) any other factors deemed by the Commission to be related
28 to the criteria in subsection (e).

29 **“§ 3-12F4. Conditions of Parole**

30 “(a) GENERAL.—The conditions of parole shall be such as the Com-
31 mission in its discretion deems reasonable and appropriate to assist the
32 offender to lead a law-abiding life. It shall be a condition in each case
33 that the offender:

34 “(1) not commit another offense, Federal, state, or local, during
35 the term of parole;

36 “(2) report to a probation officer at reasonable times as directed
37 by the Commission or the probation officer;

38 “(3) permit the probation officer to visit him at reasonable times
39 and hours at his place of residence or elsewhere;

40 “(4) answer truthfully all reasonable inquiries by the proba-
41 tion officer; and

1 “(5) notify the probation officer promptly of any change in
2 situation, residence, or employment.

3 “(b) APPROPRIATE CONDITIONS.—The Commission, as a condition of
4 parole, may require the offender released on parole to:

5 “(1) support his dependents and to meet his family responsi-
6 bilities;

7 “(2) devote himself to an approved employment or occupa-
8 tion;

9 “(3) undergo available medical or psychiatric treatment and
10 to enter and remain in a specified institution, when required for
11 that purpose;

12 “(4) pursue a prescribed course of study or vocational train-
13 ing;

14 “(5) attend or reside in a facility established for the instruc-
15 tion, recreation, or residence of persons released on probation, con-
16 ditional discharge, or parole;

17 “(6) participate in a community treatment program;

18 “(7) refrain from frequenting specified places, consorting
19 with specified persons, or engaging in conduct similar to that
20 constituting the offense for which he has been convicted or afford-
21 ing favorable opportunities for repeating the offense;

22 “(8) refrain from possessing a firearm or other dangerous
23 weapon;

24 “(9) pay any fine authorized by the code;

25 “(10) make restitution of the fruits of his offense or make
26 reparation, in an amount he can afford to pay, for the loss or dam-
27 age caused by such offense;

28 “(11) refrain from excessive use of alcohol and drug abuse;

29 “(12) comply, so far as practicable, with the terms and objec-
30 tives of the parole plan and notify the Commission of any changes
31 or amendment to such plan;

32 “(13) participate in a supervised rehabilitation program which
33 may include treatment, counseling, training, and education;

34 “(14) reside in a specified place or area where the likelihood of
35 his committing further offenses is lessened, or to refrain from
36 residing in a specified neighborhood, town, city, or state;

37 “(15) remain within the geographic limits fixed in his cer-
38 tificate of parole, unless granted written permission by the Com-
39 mission or his probation officer to leave such limits;

“(16) post bond or deposit cash or property, in an amount he can afford, with or without surety, conditioned on the performance of any of the foregoing obligations; or

“(17) comply with any other condition or conditions deemed by the Commission to be reasonably related to the rehabilitation of the offender or to public safety or security.

“(c) **CONDITION OF DEPORTATION.**—When an alien offender subject to deportation becomes eligible for parole under section 3-12F3 (Parole), the Commission may authorize his release on condition that he be deported and remain outside the United States. Such offender, when his parole becomes effective, shall be delivered to authorized immigration official for deportation.

“(d) **CERTIFICATE.**—When an offender is released on parole, he shall be given a certificate setting forth the conditions on which he is being released.

“§ 3-12F5. Duration of Parole

“(a) **COMMENCEMENT.**—A period of parole commences on the day the offender is released from imprisonment.

“(b) **MODIFICATION.**—During the term of parole, upon application of the offender, his probation officer, or upon its own motion, the Commission may modify or enlarge the conditions of parole. The Commission shall modify any requirement that in its opinion imposes an unreasonable burden on the offender.

“(c) **REVOCATION.**—During the term of parole, upon application of his probation officer or upon its own motion, the Commission may revoke the parole of the offender under section 3-12F6 (Response to Noncompliance with Condition of Parole) and reimprison him for a term computed in the following fashion:

“(1) the reimprisonment shall be for such portion of the maximum term which has not been served at the time of parole, less fifty per centum of the time elapsed between the parole of the offender and the commission of the violation for which parole is to be revoked; and

“(2) the offender shall be given credit against the term of reimprisonment for all time spent in official detention since he was paroled which has not been credited against another sentence.

“§ 3-12F6. Response to Noncompliance With Condition of Parole

“(a) **SANCTIONS SHORT OF REVOCATION.**—If the probation officer has probable cause to believe that an offender has violated a condition of parole, he shall notify the chief probation officer with his recommendation for appropriate action. The chief probation officer may

1 then notify the Commission with his recommendation for action and a
2 copy of the offender's record. Upon consideration and such further
3 investigation as it may deem appropriate, the Commission may order
4 that:

5 " (1) the offender receive a reprimand and warning from the
6 board;

7 " (2) parole supervision and reporting be intensified;

8 " (3) the offender be required to conform to one or more addi-
9 tional conditions of parole, including living in a named residence
10 facility;

11 " (4) the offender be arrested under its warrant authorizing his
12 official detention pending a preliminary determination by the board
13 as to whether he should be released or held in accordance with the
14 terms of his original sentence of imprisonment. Such determi-
15 nation shall be made without a hearing within 15 days of such
16 arrest. If the determination is made that he be held in accordance
17 with the terms of his original sentence of imprisonment, he shall
18 be so held pending a hearing pursuant to subsection (c) to de-
19 termine whether his parole should be revoked;

20 " (5) the offender be arrested and held forthwith in accordance
21 with the terms of his original sentence of imprisonment to await
22 a hearing pursuant to subsection (c) to determine whether his
23 parole should be revoked.

24 " (b) EMERGENCY SITUATION.—If a probation officer, chief proba-
25 tion officer, or Parole Commissioner has probable cause to believe that
26 an offender has violated or is about to violate a condition of parole and
27 that awaiting determination by the Commission would create an undue
28 risk to the public or to the offender, such probation officer, chief proba-
29 tion officer, or Parole Commissioner may arrest the offender or cause
30 him to be arrested, with or without first issuing a warrant, and may
31 call upon any law enforcement officer to assist in making the arrest.
32 Such offender shall be held in official detention pending a determination
33 by the Commission. Such probation officer, chief probation officer, or
34 Parole Commissioner shall notify the Commission immediately after
35 such arrest and official detention and shall submit a written report
36 setting forth in detail the reasons for such arrest and detention. Upon
37 receipt of such notice and report, the Commission may order the release
38 of the offender or may take any action authorized under subsection (a).

39 " (c) HEARING.—If an offender has been ordered held in accordance
40 with the terms of his original sentence of imprisonment, the Commis-
41 sion shall hold a hearing within sixty days to determine whether his

parole should be revoked. The offender shall have reasonable and written notice of the violation charged. At the hearing, the offender may admit, deny, or explain the violation charged; he may present evidence, including affidavits, in support of his contentions; and he shall be entitled to the assistance of counsel.

“(d) REVOCATION.—The Commission may order revocation of parole if it is satisfied that:

“(1) the offender has failed, without a satisfactory excuse, to comply with a requirement imposed as a condition of parole; and

“(2) the violation involves:

“(i) the commission of another crime;

“(ii) behavior indicating a substantial risk that the parolee will commit another crime; or

“(iii) behavior indicating that the offender is apparently unwilling or unable to comply with all of the conditions of parole.

“(e) CANAL ZONE PAROLE VIOLATORS.—A warrant issued by the Governor of the Canal Zone shall be executed by an officer of a Federal correctional facility or a Federal officer authorized to serve criminal process within the United States. The officer to whom such warrant is delivered shall arrest the offender and hold him in official detention pending delivery to an authorized representative of the Governor of the Canal Zone for return to the Canal Zone.

“§ 3-12F7. Finality of Parole Determinations

“No court of the United States shall have jurisdiction to review or set aside any action of the Parole Commission regarding, but not limited to, the release or deferment of release of an offender whose maximum term has not expired, the imposition or modification of conditions of parole, or the reimprisonment of an offender for noncompliance with conditions of parole during the term of parole.

“Chapter 13.—MISCELLANEOUS

“Subchapter

“A. Ancillary Civil Remedies.

“B. Juvenile Delinquency.

“C. Criminal Law Reform Commission.

“Subchapter A.—Ancillary Civil Remedies

“Sec.

“3-13A1. Injunctions.

“3-13A2. Damages.

“3-13A3. Civil Forfeiture.

“3-13A4. Procedure.

“3-13A5. Civil Investigative Demand.

1 **“§ 3-13A1. Injunctions**

2 “(a) GENERAL.—In addition to what is otherwise provided, the dis-
3 trict courts of the United States shall have jurisdiction to prevent and
4 restrain violations of the following sections:

5 “2-6B1 (Physical Obstruction of Government Function);

6 “2-6C1 (Obstruction of Justice);

7 “2-6C2 (Impeding Justice);

8 “2-6C3 (Harassment of Juror);

9 “2-6C4 (Demonstrating to Influence Judicial Proceeding);

10 “2-6E3 (Threatening a Public Servant);

11 “2-6E4 (Retaliation);

12 “2-6E5 (Misuse of Personnel Authority);

13 “2-6F1 (Disclosure of Confidential Information);

14 “2-6F3 (Conflict of Interest);

15 “2-6H1 (Safeguarding Elections);

16 “2-6H2 (Political Contribution of Federal Public Servant);

17 “2-6H3 (Political Contribution by Agent of Foreign Prin-
18 cipal);

19 “2-7G1 (Eavesdropping);

20 “2-7G2 (Trafficking in Eavesdropping Device);

21 “2-7G3 (Interception of Correspondence);

22 “2-8C5 (Criminal Trespass);

23 “2-8D4 (Receiving Stolen Property);

24 “2-8D5 (Scheme to Defraud);

25 “2-8E4 (Trafficking in Specious Securities);

26 “2-8F1 (Bankruptcy Fraud);

27 “2-8F2 (Commercial Bribery);

28 “2-8F3 (Environmental Spoliation);

29 “2-9B1 (Inciting Riot);

30 “2-9B2 (Arming Rioters);

31 “2-9B3 (Engaging in a Riot);

32 “2-9C1 (Racketeering Activity);

33 “2-9E1 (Drug Trafficking or Possession);

34 “2-9F1 (Illegal Gambling Business);

35 “2-9F2 (Protecting States Antigambling Policies);

36 “2-9F3 (Illegal Prostitution Business); or

37 “2-9F4 (Protecting State Antiprostitution Policies by issuing
38 appropriate orders, including:

39 “(1) ordering any person to divest himself of any interest,
40 direct or indirect, in any organization;

1 “(2) imposing reasonable restrictions on the future activi-
2 ties of any person, including making investments or prohib-
3 iting any person from engaging in the same type of organiza-
4 tion involved in the offense; or

5 “(3) ordering dissolution or reorganization of any organi-
6 zation, making due provision for the rights of innocent
7 persons.

8 “(b) **APPLICATION BY UNITED STATES.**—The Attorney General may
9 institute proceedings under subsection (a). In any such proceeding, the
10 court shall move as soon as practicable to a hearing and determination.
11 Pending final determination, the court may at any time enter such
12 restraining orders or prohibitions or take such other actions as are in
13 the interest of justice.

14 “(c) **APPLICATION BY PRIVATE PARTY.**—Any aggrieved person may
15 institute proceedings under subsection (a). In any such proceeding,
16 relief shall be granted in conformity with the principles which govern
17 the granting of injunctive relief from threatened loss or damage in
18 other civil cases. Upon the execution of proper bond against damages
19 for an injunction improvidently granted and a showing of immediate
20 danger of irreparable loss or damage, a temporary restraining order
21 and preliminary injunction may be issued in any such action before
22 a final determination on the merits.

23 **“§ 3-13A2. Damages**

24 “(a) **APPLICATION BY UNITED STATES.**—If the Federal government
25 is injured by reason of any violation of any offense designated in sec-
26 tion 3-13A1(a) (General), the Attorney General may bring a
27 civil action in a district court of the United States and shall recover
28 the actual damages sustained by the United States and the cost of
29 the action.

30 “(b) **APPLICATION BY PRIVATE PARTY.**—If a person other than the
31 Federal government is injured by reason of any violation of any
32 offense designated in section 3-13A1(a) (General) other than those
33 designated in subsection (c), he may bring a civil action in a district
34 court of the United States and shall recover the actual damages sus-
35 tained by him and a reasonable attorney's fee and other litigation
36 costs reasonably incurred.

37 “(c) **SPECIAL DAMAGES.**—If a person other than the Federal gov-
38 ernment is injured by any person by reason of a violation of any of
39 the following sections:

40 “2-7G1 (Eavesdropping);

- 1 "2-8D4 (Receiving Stolen Property);
- 2 "2-8D5 (Scheme to Defraud);
- 3 "2-8E4 (Trafficking in Specious Securities);
- 4 "2-8F2 (Commercial Bribery);
- 5 "2-9B1 (Inciting Riot);
- 6 "2-9B2 (Arming Rioters);
- 7 "2-9B3 (Engaging in a Riot);
- 8 "2-9C1 (Racketeering Activity);
- 9 "2-9E1 (Drug Trafficking or Possession);
- 10 "2-9F1 (Illegal Gambling Business);
- 11 "2-9F2 (Protecting States Antigambling Policies);
- 12 "2-9F3 (Illegal Prostitution Business); or
- 13 "2-9F4 (Protecting State Antiprostitution Policies)
- 14 he may bring a civil act in a district court of the United States and
- 15 he shall be entitled to recover from any such person:
- 16 " (1) threefold the actual damages sustained by him;
- 17 " (2) punitive damages; and
- 18 " (3) a reasonable attorney's fee and other litigation costs rea-
- 19 sonably incurred.
- 20 **"§ 3-13A3. Civil Forfeiture**
- 21 (a) GENERAL.—In addition to what is otherwise provided, the dis-
- 22 trict courts of the United States shall have jurisdiction to order for-
- 23 feited to the United States any property, tangible or intangible, real
- 24 or personal, including money used, intended for use, or possessed in
- 25 violation of the following sections:
- 26 "2-6B6 (Contraband);
- 27 "2-6G3 (Trafficking in Taxable Object);
- 28 "2-6G4 (Smuggling);
- 29 "2-7G2 (Trafficking in Eavesdropping Device);
- 30 "2-8E1 (Counterfeiting);
- 31 "2-8E2 (Forgery);
- 32 "2-8E3 (Counterfeiting Paraphernalia);
- 33 "2-8E5 (Making or Passing Slugs);
- 34 "2-9D2 (Procuring or Supplying Dangerous Weapon for Crim-
- 35 inal Activity);
- 36 "2-9D3 (Illegal Firearms, Ammunition, or Explosive Mate-
- 37 rials Business);
- 38 "2-9D4 (Trafficking in and Receiving Limited-Use Firearms);
- 39 "2-9D5 (Possession of Explosives and Destructive Devices in
- 40 Buildings);

1 “2-9E1 (Drug Trafficking or Possession) ;

2 “2-9F1 (Illegal Gambling Business) ;

3 “2-9F2 (Protecting State Antigambling Policies) ;

4 “2-9F3 (Illegal Prostitution Business) ;

5 “2-9F4 (Protecting State Antiprostitution Policies)

6 “(b) APPLICATION BY UNITED STATES.—The Attorney General may
7 institute proceedings under subsection (a). In any such proceeding,
8 the court may at any time enter such restraining orders or prohibitions
9 or take such other actions as are in the interest of justice, including the
10 acceptance of satisfactory performance bonds in connection with any
11 property subject to civil forfeiture.

12 “(c) ENFORCEMENT.—If a judgment for the United States is entered
13 under this section, the Attorney General is authorized to seize all prop-
14 erty or other interest declared forfeited upon such terms and condi-
15 tions as are in the interest of justice. The United States shall dispose of
16 all such property or other interest as soon as commercially feasible,
17 making due provision for the rights of innocent persons. If any prop-
18 erty or other interest is not exercisable or transferable for value by the
19 United States, it shall not revert but shall expire. All provisions of
20 law relating to the disposition of forfeited property, the proceeds from
21 the sale of such property, the remission or mitigation of forfeitures
22 for violation of the customs laws, and the compromise of claims and
23 the award of compensation to informants with respect to forfeitures
24 shall apply to civil forfeitures incurred, or alleged to have been in-
25 curred, under this section, insofar as applicable and not inconsistent
26 with the provisions of this section. Such duties as are imposed upon the
27 collector of customs or any other person with respect to seizure, for-
28 feiture, or disposition of property under the customs laws shall be
29 performed with respect to property used, intended for use, or possessed
30 in violation of subsection (a) by such officers, agents, or other persons
31 as may be designated for that purpose by the Attorney General.

32 **“§ 3-13A4. Procedure**

33 “(a) PLACE.—A civil action or proceeding under this subchapter
34 against any person may be instituted in the district court of the United
35 States for any judicial district in which such person resides, is found,
36 has an agent, or transacts his affairs.

37 “(b) OTHER PARTIES.—In a civil action or proceeding under this
38 subchapter in a district court of the United States, if it is shown that
39 the interests of justice require that any other party residing in any
40 other district be brought before the court, the court may cause such

1 party to be summoned, and process for that purpose may be served in
2 any judicial district of the United States.

3 “(c) **SUBPOENAS.**—In a civil action or proceeding under this sub-
4 chapter in a district court of the United States, subpoenas issued by
5 such court to compel the attendance of witnesses may be served in any
6 judicial district of the United States, except that no such subpoena
7 shall be issued for service upon a human being who resides in another
8 district at a place more than one hundred miles from the place at which
9 such court is held without the approval of the court upon a showing of
10 good cause.

11 “(d) **OTHER PROCESS.**—All other process in a civil action or proceed-
12 ing under this subchapter may be served on a person in any judicial
13 district of the United States in which such person resides, is found, has
14 an agent, or transacts his affairs.

15 “(e) **INTERVENTION.**—The United States may, upon timely appli-
16 cation, intervene in any civil action or proceeding brought under this
17 subchapter if the Attorney General certifies that in his opinion the
18 action or proceeding is of general public importance. In such action
19 or proceeding, the United States shall be entitled to the same relief
20 as if the Attorney General had instituted the action or proceeding.

21 “(f) **ESTOPPEL.**—A final judgment or decree rendered in favor of
22 the United States in any criminal action or proceeding shall estop the
23 defendant in any subsequent civil action or proceeding as to all matters
24 as to which such judgment or decree would be an estoppel as between
25 the parties to it.

26 “(g) **LIMITATIONS.**—Except as otherwise provided, any civil action
27 or proceeding under this subchapter is barred unless it is commenced
28 within five years after the cause of action accrued. If a civil action or
29 proceeding, other than an action under section 3-13A2(a) (Applica-
30 tion by United States), is brought or intervened in by the United
31 States to prevent, restrain, or punish any violation of the offenders
32 designated in section 3-13A1(a) (General), the running of the period
33 of limitations prescribed by this subsection with respect to any cause
34 of action arising under section 3-13A1(c) (Application by Private
35 Party) or 3-13A2(b) (Application by Private Party), which is based
36 in whole or in part on any matter complained of in such action or
37 proceeding by the United States, shall be suspended during the pend-
38 ency of such action or proceeding by the United States and for two
39 years following such action or proceeding.

1 **“§ 3-13A5. Civil Investigative Demand**

2 “(a) **GENERAL.**—If the Attorney General has reason to believe that
3 a person may be in possession, custody, or control of any documentary
4 material or materials and that such material may be relevant to a pro-
5 ceeding under this subchapter, he may, prior to the institution of a
6 civil action or proceeding, issue in writing and cause to be served on
7 such person a civil investigative demand requiring such person to pro-
8 duce such material for examination. Each such civil investigative
9 demand shall:

10 “(1) state the character of the conduct under investigation and
11 the provision of law applicable;

12 “(2) describe the class of documentary material or materials
13 to be produced with sufficient definiteness to enable such material
14 to be fairly identified;

15 “(3) state that the demand is returnable forthwith or prescribe
16 a return date which provides a reasonably sufficient period of
17 time within which such material can be assembled and made
18 available for inspection and copying or reproduction; and

19 “(4) identify the document custodian to whom such material
20 shall be made available.

21 “(b) **LIMITATIONS.**—No such demand shall contain any requirement
22 which would be held to be unreasonable if contained in a subpoena
23 duces tecum issued by a court of the United States in aid of a grand
24 jury investigation.

25 “(c) **SERVICE.**—Service of a civil investigative demand or petition
26 filed under this section may be made upon a person by:

27 “(1) delivering a duly executed copy to a partner, executive of-
28 ficer, managing agent, or general agent, or to an agent author-
29 ized by appointment or by law to receive service of process on
30 behalf of such person, or upon a human being;

31 “(2) delivering a duly executed copy to the principal office or
32 place of business of the person to be served; or

33 “(3) depositing a duly executed copy in the United States mail,
34 by registered or certified mail duly addressed to such person at
35 his principal office or place of business, return receipt requested.

36 “A verified return by the person serving such demand or petition
37 setting forth the manner of such service shall be prima facie proof
38 of service. In the case of service by registered or certified mail, such
39 return shall be accompanied by the return post office receipt of de-
40 livery of such demand: .

1 “(d) CUSTODY.—(1) The Attorney General shall designate a person
2 to serve as document custodian and such additional persons as he shall
3 determine from time to time to be necessary to serve as deputies to
4 such document custodian.

5 “(2) A person upon whom a civil investigative demand has
6 been duly served shall make such material available for inspection
7 and copying or reproduction to the custodian designated, at the princi-
8 pal place of business of such person, on the return date specified in the
9 demand. Upon written agreement between such person and the cus-
10 todian or upon an order of the court, the material may be made avail-
11 able at such other place as is agreed upon or ordered, the date for
12 making such material available may be fixed at a later date, and such
13 person may substitute originals for copies of all or any part of such
14 material.

15 “(3) The custodian to whom such material is delivered shall take
16 physical possession and shall be responsible for the use made of it
17 and for its return. The custodian may prepare as many copies of such
18 documentary material as may be required for official use, under regu-
19 lations prescribed by the Attorney General. While in the possession
20 of the custodian, no material so produced shall be available for exami-
21 nation by any person other than the Attorney General, without the
22 consent of the person who produced such material. Documentary ma-
23 terial in the possession of the custodian shall be available for exami-
24 nation by the person who produced such material or his duly author-
25 ized representative, under such reasonable terms and conditions as
26 the Attorney General shall prescribe.

27 “(4) The custodian shall deliver to an attorney designated to appear
28 on behalf of the United States before a court or grand jury in any
29 action or proceeding such documentary material in his possession as
30 the attorney determines is needed in the presentation of such action or
31 proceeding. Upon the conclusion of the action or proceeding, the attor-
32 ney shall return to the custodian any such material which has not
33 passed into the control of the court or grand jury through its in-
34 troduction into the record of such action or proceeding.

35 “(5) Upon the completion of:

36 “(i) the investigation for which material was produced under
37 this section; and

38 “(ii) any action or proceeding arising from such investigation,
39 the custodian shall return to the person who produced such mate-
40 rial all such material, other than copies made under this subsec-
41 tion, which has not passed into the control of a court or grand

1 jury through its introduction into the record of such action or
2 proceeding.

3 “(6) When any such material has been produced by a person for use
4 in an investigation, and no such action or proceeding has been instituted
5 within a reasonable time after completion of the examination and
6 analysis of all evidence assembled in the course of such investigation,
7 such person shall be entitled, upon written demand made upon the
8 Attorney General, to the return of all such material produced by him,
9 other than copies made under this subsection.

10 “(7) If the document custodian dies, becomes disabled, is separated
11 from service, or is officially relieved of responsibility for the custody
12 and control of material produced under this section, the Attorney Gen-
13 eral shall promptly :

14 “(i) designate another person to serve as document custodian;
15 and

16 “(ii) notify in writing all persons who produced such material
17 of the name and address of the designated successor.

18 “Any successor so designated shall assume all the duties and respon-
19 sibilities imposed by this section, but he shall not be held responsible
20 for any default or dereliction prior to his designation as document
21 custodian.

22 “(e) ENFORCEMENT.—(1) If a person fails to comply with a civil in-
23 vestigative demand duly served upon him under this section, or if satis-
24 factory copying or reproduction of any such material cannot be done
25 and such person refuses to surrender such material, the Attorney
26 General may file, in the district court of the United States for the
27 judicial district in which such person resides, is found, or transacts
28 business, and serve upon such person a petition for an enforcement
29 order. If the person transacts business in more than one judicial dis-
30 trict, such petition shall be filed in the district in which such person
31 maintains his principal place of business, or in such other district in
32 which such person transacts business as may be agreed upon by the
33 parties to the petition.

34 “(2) Within 20 days after the service of a civil investigative demand
35 upon a person, or at any time before the return date specified in the
36 demand, whichever period is shorter, such person may file, in the dis-
37 trict court of the United States for the judicial district in which he
38 resides, is found, or transacts business, and serve upon the attorney for
39 the government a petition for an order of such court modifying or
40 setting aside such demand. The time allowed for compliance with the
41 demand in whole or in part as deemed proper and ordered by the court

shall not run while such petition is pending in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief. The petition may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

“(3) At any time during which the document custodian has custody or control of material delivered by a person in compliance with a civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is located, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

“Subchapter B.—Juvenile Delinquency

“Sec.

“3-13B1. Definition of Terms.

“3-13B2. Surrender to State Authorities.

“3-13B3. Alleged Juvenile Delinquent.

“3-13B4. Juvenile Delinquency Proceedings.

“3-13B5. Parole of Juvenile Delinquent.

“§ 3-13B1. Definition of Terms

“As used in this subchapter, unless it is otherwise provided or a different meaning plainly is required :

“(1) ‘juvenile’ means a human being who has not attained his eighteenth birthday; and

“(2) ‘juvenile delinquency’ means conduct constituting an offense by a juvenile as to which disposition is made under section 1-3B3 (Immaturity) or this subchapter.

“§ 3-13B2. Surrender to State Authorities

“(a) SURRENDER.—If a juvenile has been arrested, charged with the commission of an offense, and it appears, after investigation by the Department of Justice, that such juvenile has also committed an offense or is a delinquent under the laws of any state which can and will assume jurisdiction and deal with such juvenile according to its laws, the attorney for the government in the district in which the juvenile was arrested may forego prosecution and surrender the juvenile to such state if he determines that such surrender will be in the best interest of the United States and of the alleged juvenile offender.

“(b) TRANSPORTATION.—The United States marshal of the district in which the juvenile was arrested shall, upon written order of the attorney for the government, convey such juvenile to such state or, if he is already there, to any other part of such state and shall deliver him into the official detention of the proper state authority.

1 “(c) **CONSENT OR DEMAND.**—Before any juvenile is conveyed from
2 one state to another under this section, the juvenile must consent or
3 a demand must be presented to the attorney for the government from
4 the executive authority of the state to which the juvenile is to be
5 returned, supported by indictment or affidavit as prescribed by section
6 3-10E3 (Fugitive from State to State).

7 “(d) **EXPENSE.**—Expenses incident to the transportation of a ju-
8 venile under this section shall be paid from the appropriation ‘salaries,
9 fees, and expenses, United States marshals’.

10 **“§ 3-13B3. Alleged Juvenile Delinquent**

11 “(a) **ARREST.**—Whenever a juvenile is arrested for an alleged act
12 of juvenile delinquency, the arresting officer shall immediately advise
13 such juvenile of his legal rights and notify the Attorney General and
14 the juvenile’s parents, guardian, or other custodian of such arrest and
15 official detention.

16 “(b) **DETENTION.**—Except in extraordinary circumstances, such
17 juvenile may be detained only in a juvenile facility or such other suit-
18 able place as the Attorney General shall designate. No juvenile alleged
19 to be delinquent shall be held, except in extraordinary circumstances,
20 in any correctional facility in which adult persons convicted of an
21 offense or awaiting trial on charges of an offense are held in official
22 detention. Such juvenile shall not be detained longer than a reasonable
23 period of time required to produce the juvenile before a magistrate.

24 “(c) **RELEASE.**—The magistrate shall release such juvenile to his
25 parents, guardian, custodian, or other responsible party upon the
26 promise of such person to bring the juvenile before the appropriate
27 court when requested by such court, unless the magistrate determines
28 after a hearing that official detention of such juvenile is required
29 to secure his timely appearance before the appropriate court or to
30 protect the safety of him or another person.

31 “(d) **COUNSEL.**—Any magistrate before whom such juvenile may
32 be brought shall advise him, his parents, guardian, or other custodian
33 of his right to be represented by legal counsel at all critical stages
34 of the juvenile proceeding and that legal counsel will be appointed by
35 the court if the juvenile is unable to secure such counsel.

36 **“§ 3-13B4. Juvenile Delinquency Proceedings**

37 “(a) **GENERAL.**—A juvenile who is alleged to have committed an
38 offense and who is not surrendered to State authorities shall be pro-
39 ceeded against as a juvenile delinquent, unless he is fifteen years old or
40 more and, upon the motion of the Attorney General, the Court, having

1 jurisdiction over the alleged offense, duly directs otherwise in the in-
2 terest of justice.

3 “(b) PROCEDURE.—District courts of the United States shall have
4 jurisdiction of proceedings against juvenile delinquents. A juvenile
5 shall be proceeded against by information and no adult prosecution
6 shall be instituted for the alleged offense. For such purposes, the court
7 may be convened at any time and place within the judicial district, in
8 chambers or otherwise. The proceeding shall be without a jury.

9 “(c) DISPOSITION.—If the court finds a juvenile to be a juvenile
10 delinquent, the court may place him on probation or commit him to
11 official detention by the Attorney General. Such commitment shall not
12 be:

13 “(1) for a period that extends beyond the date when such person
14 becomes 23 years old; or

15 “(2) for a longer term than could have been imposed if such
16 person had been eligible for and tried, convicted, and sentenced
17 as an adult to the maximum term of imprisonment authorized.

18 “(d) COMMITMENT PENDING DISPOSITION.—If the court desires more
19 detailed information as a basis for determining whether to place a
20 juvenile delinquent on probation or commit him to official detention
21 by the Attorney General, the court may commit him to the custody
22 of the Attorney General for observation and study at an appropriate
23 classification center or agency. Commitment for observation shall be
24 for a period not to exceed 60 days. The Bureau of Corrections, under
25 such regulations as the Attorney General may prescribe, shall conduct
26 a complete study of the juvenile delinquent during that time, inquiring
27 into such matters as his previous delinquency experience, his social
28 background, his capabilities, his mental, emotional, and physical
29 health, the significant problem or problems involved in his juvenile
30 delinquency, and the rehabilitative resources or programs which may
31 be available to suit his needs. By the expiration of the period of com-
32 mitment, or by the expiration of such additional time as the court
33 may grant for further observation and study, not exceeding the maxi-
34 mum period of commitment authorized under subsection (c), the juve-
35 nile delinquent shall be returned to the court for final disposition. The
36 court shall be provided with a written report of the results of the
37 study, including whatever recommendations the Bureau believes will
38 be helpful to a proper resolution of the case.

1 “(e) **PLACE OF OFFICIAL DETENTION.**—The Attorney General may
 2 designate as the place of official detention during the period of com-
 3 mitment any public or private agency or foster home that provides
 4 custody, care, subsistence, education, and training. No juvenile found
 5 to be delinquent shall be held, except in extraordinary circumstances,
 6 in any correctional facility in which adult persons convicted of an
 7 offense or awaiting trial on charges of an offense are held in official
 8 detention.

9 “(f) **CONTRACTING.**—The Director of the Bureau of Corrections
 10 may contract with public or private agencies or foster homes for the
 11 custody, care, subsistence, education, and training of juvenile delin-
 12 quents. The cost of commitment and official detention under this sec-
 13 tion may be paid from the appropriation for ‘support of United States
 14 prisoners’ or such other appropriations as the Attorney General may
 15 designate.

16 **“§ 3-13B5. Parole of Juvenile Delinquent**

17 “A juvenile delinquent who has been committed to official detention
 18 under section 3-13B4(c) (Disposition) may be released on parole by
 19 the Parole Commission at any time, under such conditions as the
 20 Commission deems proper, if:

21 “(a) by his conduct, the juvenile delinquent has given sufficient
 22 evidence that he has reformed; and

23 “(b) it shall appear to the satisfaction of the Commission that
 24 there is reasonable probability that he will remain at liberty with-
 25 out committing an offense or violating a condition of parole.

26 **“Subchapter C.—Criminal Law Reform Commission**

“Sec.

“3-13C1. Establishment.

“3-13C2. Duties.

“3-13C3. Powers.

“3-13C4. Compensation and Exemption of Members.

“3-13C5. Staff.

“3-13C6. Expenses.

27 **“§ 3-13C1. Establishment**

28 “(a) **ESTABLISHMENT.**—There is hereby established 120 days after
 29 the enactment of this Act a Criminal Law Reform Commission.

30 “(b) **MEMBERSHIP.**—The Commission shall be composed of sixteen
 31 members appointed as follows:

32 “(1) two appointed by the President of the Senate from Mem-
 33 bers of the Senate, and two appointed by the Speaker of the House
 34 of Representatives from Members of the House of Representa-
 35 tives, of whom one from each House shall be a member of the ma-

1 jority party and the other shall be a member of the minority
2 party;

3 “(2) four appointed by the Chief Justice of the United States
4 from members of the Federal judiciary, including magistrates;

5 “(3) four appointed by the President of the United States from
6 employees of Federal agencies, offices, and executive departments;
7 and

8 “(4) four appointed by the President of the United States
9 from members of the general public, on the basis of special train-
10 ing, experience, or qualifications, none of whom shall serve as
11 public servants during their terms of office and no more than two
12 of whom may be members of the same political party.

13 “Any vacancy shall be filled in the same manner in which the ori-
14 ginal appointment was made.

15 “(c) **TERMS OF OFFICE.**—The members of the Commission first ap-
16 pointed shall be appointed for terms of office as follows: one-half for
17 four years, and one-half for eight years, respectively, from the effective
18 date of this section. The term of office of a successor to any member
19 shall expire eight years from the date of the expiration of the term
20 for which his predecessor was appointed, except that any person ap-
21 pointed to fill a vacancy occurring prior to the expiration of the term
22 for which his predecessor was appointed shall be appointed for the
23 remainder of such term.

24 “(d) **CHAIRMAN.**—Each of the members shall serve as Chairman of
25 the Commission for a period of six months, in alphabetical rotation,
26 except that as to the original members, the persons appointed for terms
27 of four years shall preside first.

28 “(e) **QUORUM.**—Nine members of the Commission shall constitute a
29 quorum.

30 **“§ 3-13C2. Duties**

31 “(a) **DUTIES.**—It shall be the duty of the Commission to:

32 “(1) conduct a continuing and comprehensive legal and factual
33 study of the Federal Criminal Code and to formulate and propose
34 to the President and to the Congress at the start of each session of
35 Congress such changes in the Code and other provisions as the
36 Commission may deem appropriate, including the preparation of
37 appropriate conforming and other technical amendments needed
38 to maintain consistency between the Federal Criminal Code and
39 the other titles of the United States Code. Such proposals may
40 include recommendations as to legislation with respect to per-
41 sonnel and administration;

1 “(2) direct the preparation of, and amendments to, and cause
2 to be published forms and pattern jury instructions applicable
3 to the code. Such forms and pattern jury instructions shall be pre-
4 pared and published six months prior to the effective date of the
5 code;

6 “(3) conduct a continuing and comprehensive legal and factual
7 study of the relationship between the Federal Criminal Code and
8 the Federal Rules of Criminal Procedure, the Rules of Procedure
9 before United States Magistrates, and such other rules of prac-
10 tice and procedure as may from time to time be adopted, and to
11 formulate and propose to the Supreme Court of the United States
12 at any time or to the Congress at the start of each session of Con-
13 gress such changes in such rules or statutes as the Commission
14 may deem appropriate;

15 “(4) submit to the Congress within 45 days of the submission
16 of amendments to rule of practice and procedure related to the
17 criminal law its comments, observations, and recommendations;

18 “(5) cause to be conducted continuing and comprehensive legal
19 and factual research into aspects of criminal justice, including
20 the study of alternative approaches to problems now handled by
21 the criminal law. Such research shall include preparing and main-
22 taining a record of developments in the criminal law and criminal
23 justice administration in foreign nations; and

24 “(6) prepare and cause to be published an annual review of
25 developments in the criminal law and criminal justice, including
26 an assessment in the Commission’s judgment of how the legis-
27 lative intent of the Code has been effectuated in the courts.

28 “(b) OTHER DUTIES.—The commission may perform such other du-
29 ties as the President, the Supreme Court, the Congress or any com-
30 mittee or subcommittee of the Congress shall from time to time request.

31 **“§ 3-13C3. Powers**

32 “(a) HEARINGS.—The Commission or any duly authorized subcom-
33 mittee or member of the Commission may, for the purpose of carrying
34 out the provisions of this subchapter, hold such hearings, sit and act
35 at such times and places, administer such oaths, and require by sub-
36 poena or otherwise the attendance and testimony of such witnesses and
37 the production of such evidence as the Commission or such subcom-
38 mittee or member may deem advisable. Any member of the Commis-
39 sion may administer oaths to witnesses appearing before the Com-
40 mission or before such subcommittee or member. Subpoenas may be
41 issued under the signature of the Chairman or any duly designated

1 member of the Commission, and may be served by any person design-
2 nated by the chairman or such member. Witnesses summoned before
3 the Commission or any duly authorized subcommittee or member of
4 the Commission shall be paid the same fees and mileage that are paid
5 witnesses in the courts of the United States. Such attendance of wit-
6 nesses and production may be required from any place in the United
7 States to any designated place of such hearing.

8 “(b) CONTEMPT.—In case of contumacy or refusal to obey a sub-
9 poena issued under subsection (a) by any person who resides, is found,
10 or transacts business within the jurisdiction of any district court of the
11 United States, the district court, at the request of the Chairman of the
12 Commission, shall have jurisdiction to issue to such person an order
13 requiring such person to appear before the Commission or a subcom-
14 mittee or member of the Commission, there to produce evidence if so
15 ordered or to give testimony touching the matter under inquiry.
16 Failure to obey such an order is punishable by such court as a contempt
17 of court.

18 “(c) IMMUNITY.—The Commission shall be an ‘agency of the United
19 States’ under section 3-10D1 (1) (Definition of terms), for the pur-
20 pose of granting immunity to witnesses.

21 “(d) INTER-GOVERNMENTAL COOPERATION.—Each department, agen-
22 cy, and instrumentality of the executive branch of the government,
23 including independent agencies, is authorized to furnish to the
24 Commission, upon request made by the Chairman, on a reim-
25 bursable basis or otherwise, such statistical data, reports, and other
26 information as the Commission deems necessary to carry out its func-
27 tions under this subchapter. The Chairman is further authorized to
28 call upon the departments, agencies, and other instrumentalities of the
29 states to furnish similar information, on a reimbursable basis or oth-
30 erwise. The Chairman is further authorized to call upon the depart-
31 ments, agencies, and other offices of foreign governments to furnish
32 similar information, on a reimbursable basis or otherwise.

33 “(e) ADVISORY COMMITTEES.—The Commission may designate repre-
34 sentatives to serve or assist on such advisory committees as the Com-
35 mission may determine to be necessary to maintain effective liaison
36 with Federal, foreign and international, and state and local govern-
37 ment and other agencies in the criminal justice and related fields.

38 “(f) CONTRACTS.—The Commission may enter into and perform,
39 without regard to section 529 of title 31, United States Code, such con-
40 tracts, leases, cooperative agreements, or other transactions as may
41 be necessary in the conduct of its functions, with any government

1 agency or other person, and may make grants to any government
2 agency or private nonprofit organization.

3 “(g) DELEGATION.—The Commission may arrange with the heads
4 of other Federal agencies for the performance of any of its functions
5 under this subchapter, with or without reimbursement.

6 **“§ 3-13C4. Compensation and Exemption of Members**

7 “(a) REIMBURSEMENT.—A member of the Commission who is a
8 member of Congress, a member of the Federal judiciary, or an
9 employee of the executive branch shall serve without additional com-
10 pensation, but shall be reimbursed for travel, subsistence, and other
11 necessary expenses incurred in the performance of duties vested in the
12 Commission.

13 “(b) COMPENSATION.—A member of the Commission who is not a
14 public servant shall receive \$150 per diem when engaged in the ac-
15 tual performance of duties vested in the Commission plus reimburse-
16 ment for travel, subsistence, and other necessary expenses incurred
17 in the performance of such duties.

18 **“§ 3-13C5. Staff**

19 “(a) STAFF.—Subject to such rules and regulations as the Commis-
20 sion may adopt, the Chairman shall have the power to:

21 “(1) appoint and fix the compensation of an Executive Di-
22 rector, and such additional staff personnel as he deems necessary,
23 without regard to the provisions of title 5, United States Code,
24 governing appointments in the competitive service, and without
25 regard to the provisions of chapter 51 and subchapter III of
26 chapter 53 of title 5, United States Code, relating to classi-
27 fication and General Schedule pay rates, but at rates not in ex-
28 cess of the maximum rate for GS-18 of the General Schedule un-
29 der section 5332 of such title; and

30 “(2) procure temporary and intermittent services to the same
31 extent as is authorized by section 3109 of title 5, United States
32 Code, but at rates not to exceed \$100 a day for persons.

33 “(b) QUALIFICATIONS.—In making appointments under this section,
34 the Chairman shall include among his appointments persons deter-
35 mined by the Chairman to be competent social scientists, lawyers, and
36 law enforcement or correctional officers.

37 **“§ 3-13C6. Expenses and Authorizations**

38 “There is hereby authorized to be appropriated to the Commission
39 such sums as may be necessary to carry this subchapter into effect.
40 Authority is hereby granted for appropriated money to remain avail-
41 able until expended.”

TITLE II—AMENDMENTS TO FEDERAL RULES OF
CRIMINAL PROCEDURE

SEC. 201. The Federal Rules of Criminal Procedures are amended as follows:

(a) Immediately following Rule 3, The Complaint, insert a new rule as follows:

“RULE 3.1.—COMMENCEMENT OF PROSECUTION

“A prosecution is commenced upon the filing of an indictment or an information. Commencement of prosecution for one offense shall be deemed commencement of prosecution for any included offense or offenses. A prosecution shall be deemed to have been timely commenced notwithstanding that the period of limitation has expired:

“(a) for an offense included in the offense charged, if as to the offense charged the period of limitation has not expired or there is no such period, and there is after the evidence on either side is closed at the trial, sufficient evidence to sustain a conviction of the offense charged; or

“(b) for any offense to which the defendant enters a plea of guilty or nolo contendere.”

(b) Rule 4, Warrant or summons upon complaint, is amended by adding the following subdivisions:

“(d) MULTIPLE WARRANTS UNNECESSARY.—When two or more charges are made, or two or more indictments are found against any person, only one writ or warrant shall be necessary to commit him for trial. It shall be sufficient to state in the writ the name or general character of the offenses, or to refer to them only in general terms.

“(e) TAX OFFENSES.—Warrants of arrest for violations of internal revenue laws may be issued by a magistrate upon the request of the attorney for the government, collector or deputy collector of internal revenue or revenue agent, or a private citizen. No such warrant shall be issued upon the complaint of a private citizen unless first approved in writing by the attorney for the government.”

(c) Rule 5.1, Preliminary examination, is redesignated “5.2.—Preliminary examination: Scope”, and a new Rule 5.1 as follows is inserted immediately following Rule 5:

“RULE 5.1.—PRELIMINARY EXAMINATION: TIME.

“(a) GENERAL.—Except as otherwise provided by this rule, a preliminary examination shall be held within the time set by the court or magistrate under subdivision (b) of this rule to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it.

1 “(b) DATE.—The date for the preliminary examination shall be
2 fixed by the court or magistrate at the initial appearance of the ar-
3 rested person. Except as provided by subdivision (c) of this rule, or
4 unless the arrested person waives the preliminary examination, such
5 examination shall be held within a reasonable time following initial
6 appearance, but in any event not later than :

7 “(1) the tenth day following the date of the initial appearance
8 of the arrested person before such officer if the arrested person
9 is held in custody without any provision for release, or is held in
10 custody for failure to meet the conditions of release imposed, or
11 is released from custody only during specified hours of the day ;
12 or

13 “(2) the twentieth day following the date of the initial appear-
14 ance if the arrested person is released from custody under any
15 condition other than a condition described in paragraph (1).

16 “(c) LATER DATE.—With the consent of the arrested person, the date
17 fixed by the court or magistrate for the preliminary examination may
18 be a date later than that prescribed by subdivision (b) of this rule,
19 or may be continued one or more times to a date subsequent to the
20 date initially fixed for the preliminary examination. In the absence
21 of such consent of the accused, the date fixed for the preliminary hear-
22 ing may be a date later than that prescribed by subdivision (b) of
23 this rule, or may be continued to a date subsequent to the date initially
24 fixed for the hearing, only upon the order of an appropriate United
25 States district court after a finding that extraordinary circumstances
26 exist, and that the delay of the preliminary hearing is indispensable to
27 the interests of justice.

28 “(d) DISCHARGE.—Except as provided by this subdivision, an ar-
29 rested person who has not been accorded the preliminary examination
30 required by subdivision (a) of this rule within the period of time fixed
31 by the court or magistrate in compliance with subdivisions (b) and
32 (c) of this rule shall be discharged from custody or from the require-
33 ment of bail or any other condition of release without prejudice, how-
34 ever, to the institution of further criminal proceedings against him
35 upon the charge upon which he was arrested.

36 “(e) INDICTMENT OR INFORMATION.—No preliminary examination in
37 compliance with subdivision (a) of this rule shall be required to be
38 accorded an arrested person, nor shall such arrested person be dis-
39 charged from custody or from the requirement of bail or any other con-
40 dition of release pursuant to subdivision (d) of this rule if at any time

1 subsequent to the initial appearance of such person before a court or
2 magistrate and prior to the date fixed for the preliminary examination
3 pursuant to subdivisions (b) and (c) of this rule an indictment is re-
4 turned or, in appropriate cases, an information is filed against such
5 person in a court of the United States.

6 “(f) RECORD.—Proceedings before United States magistrates under
7 this rule shall be taken down by a court reporter or recorded by suitable
8 sound recording equipment. A copy of the record of such proceeding
9 shall be made available at the expense of the United States to a person
10 who makes affidavit that he is unable to pay or give security for a
11 copy, and the expense of such copy shall be paid by the Director of the
12 Administrative Office of the United States Courts.”

13 (d) Immediately follow Rule 6, The Grand Jury, a new rule is
14 inserted as follows:

15 “RULE 6.1.—SPECIAL GRAND JURY

16 “(a) SUMMONING SPECIAL GRAND JURIES.—Each district court which
17 is located in a judicial district containing more than four million in-
18 habitants or in which the Attorney General, the Deputy Attorney Gen-
19 eral, or any designated Assistant Attorney General, certifies in writing
20 to the chief judge of the district court that in his judgment a special
21 grand jury is necessary because of criminal activity in the district shall
22 order a special grand jury to be summoned at least once in each period
23 of eighteen months unless another special grand jury is then serving.
24 Whenever the district court determines that the volume of business of
25 the special grand jury exceeds its capacity to discharge its obligations,
26 the district court may order an additional special grand jury to be
27 impaneled in that district.

28 “(b) TERM.—The special grand jury shall serve for a term of eight-
29 een months unless an order for its discharge is entered earlier by the
30 court upon a determination of the special grand jury by majority vote
31 that its business has been completed. If, at the end of the term or any
32 extension of such term, the district court determines that the business
33 of the special grand jury has not been completed, the court may enter
34 an order extending the term for an additional period of six months.
35 If a district court fails to extend the term of a special grand jury or
36 enters an order for its discharge before such special grand jury deter-
37 mines that it has completed its business, the special grand jury, upon
38 the affirmative vote of a majority of its members, may apply to the
39 chief judge of the judicial circuit within which the district court is
40 located for an order for the continuance of such term. Upon the mak-
41 ing of such an application, the term shall continue until the entry of an

1 appropriate order by the chief judge of the circuit. No special grand
2 jury, however extended, shall exceed thirty-six months, except as pro-
3 vided in subdivision (h) of this rule.

4 “(c) INVESTIGATION.—It shall be the duty of each special grand jury
5 impaneled within any judicial district to inquire into offenses against
6 the criminal laws of the United States alleged to have been committed
7 within the district. Such alleged offenses may be brought to the atten-
8 tion of the special grand jury by the court or by an attorney for the
9 government. An attorney for the government receiving information
10 concerning an alleged offense from any other person shall, if requested
11 by such person, inform the grand jury of the alleged offense, the iden-
12 tity of such person, and his action or recommendation.

13 “(d) SUBMISSION OF REPORT.—A special grand jury, with the con-
14 currence of a majority of its members, may, upon completion of its
15 original term or any extension of such term submit to the court a
16 report:

17 “(1) concerning noncriminal misconduct, malfeasance, or mis-
18 feasance in office by an appointed public officer or employee;

19 “(2) regarding criminal conditions in the judicial district; or

20 “(3) proposing recommendations for legislative, executive, or
21 administrative action in the public interest based upon stated
22 findings.

23 “(e) EXAMINATION OF REPORT.—The court to which a report is
24 submitted under subdivision (d) of this rule shall examine it and the
25 minutes of the special grand jury and, except as otherwise provided
26 in subdivisions (f) and (g) of this rule, shall make an order accept-
27 ing and filing such report as a public record if the court is satisfied
28 that the report complies with the provisions of subdivision (d) of this
29 rule and that:

30 “(1) the report is based upon facts revealed in the course of
31 an investigation authorized by subdivision (c) of this rule and
32 is supported by the preponderance of the evidence;

33 “(2) when the report is submitted under subdivision (d) (1) of
34 this rule each person named in the report and any reasonable
35 number of witnesses in his behalf as designated by him to the
36 foreman of the special grand jury were afforded an opportunity
37 to testify prior to the filing of the report; and

38 “(3) when the report is submitted under subdivision (d) (2) or
39 (d) (3) of this rule the report is not critical of an identified
40 person.

1 “(f) **SEALING AND ANSWERING REPORT.**—(1) An order accepting a
2 report under subdivision (d) (1) of this rule and the report shall be
3 sealed by the court and shall not be filed as a public record or be sub-
4 ject to subpoena or otherwise made public:

5 “(i) until at least thirty-one days after a copy of the order and
6 report are served upon each public officer or employee named in
7 the report and an answer has been filed or the time for filing an
8 answer has expired, or

9 “(ii) if an appeal is taken, until all rights of review of the
10 public officer or employee named in the report have expired or
11 terminated in an order accepting the report.

12 No order accepting a report under subdivision (d) (1) of this rule shall
13 be entered until thirty days after the delivery of the report to the pub-
14 lic officer or body under paragraph (3) of this subdivision. The court
15 may issue such orders as it deems appropriate to prevent unauthorized
16 publication of a report. Unauthorized publication may be punished as
17 contempt of the court.

18 “(2) A public officer or employee named in a report may file with
19 the clerk a verified answer to the report not later than twenty days
20 after service of the order and report upon him. Upon a showing of
21 good cause, the court may grant such public officer or employee an
22 extension of time within which to file a verified answer and may
23 authorize such limited publication of the report as may be necessary
24 to him to prepare an answer. Such an answer shall plainly and con-
25 cisely state the facts and law constituting the public officer’s or employ-
26 ee’s defense to the charges in the report. Except for those parts which
27 the court determines to have been inserted scandalously, prejudi-
28 ciously, or unnecessarily, the answer shall become an appendix to the
29 report.

30 “(3) Upon the expiration of the time set forth in paragraph (1)
31 (i) and (iii) of this subdivision, the attorney for the government shall
32 deliver a true copy of the report, and the appendix, if any, to the pub-
33 lic officer or body having jurisdiction, responsibility, or authority over
34 each public officer or employee named in the report.

35 “(g) **PREJUDICE.**—Upon the submission of a report under subdivi-
36 sion (d) of this rule, if the court finds that the filing of the report as a
37 public record may prejudice fair consideration of a pending criminal
38 matter, the report shall be sealed by the court and such report shall not
39 be subject to subpoena or public inspection during the pendency of
40 such criminal matter, except upon order of the court.

1 “(h) OTHER ORDER.—Whenever the court to which a report is sub-
2 mitted under subdivision (d) (1) of this rule is not satisfied that the
3 report complies with the provisions of subdivision (e) of this rule,
4 the court may direct additional testimony to be taken before the same
5 special grand jury or order the report to be sealed. Such report shall
6 not be filed as a public record or be subject to subpoena or otherwise
7 made public until the provisions of subdivision (e) of this rule are
8 met. The term of a special grand jury may be extended by the court
9 beyond thirty-six months in order that such additional testimony may
10 be taken and the provisions of subdivision (e) of this rule met.

11 “(i) RULES.—The provisions of these rules applicable to regular
12 grand juries shall apply to special grand juries to the extent not
13 inconsistent with this rule.

14 “(j) DEFINITION.—As used in this rule, ‘public officer or employee’
15 means any officer or employee of the United States, any State, or any
16 political subdivision, or any department, agency, or instrumentality
17 of any State or political subdivision.”

18 (e) Rule 15, Depositions, is struck in its entirety and the following
19 inserted in lieu thereof:

20 “RULE 15.—DEPOSITIONS

21 “(a) WHEN TAKEN.—Whenever due to special circumstances of the
22 case it is in the interest of justice that the testimony of a prospective
23 witness of a party be taken and preserved for use at trial, the court
24 may upon motion of such party and notice to the parties order that
25 testimony of such witness be taken by deposition and that any desig-
26 nated book, paper, document, record, recording, or other material not
27 privileged, be produced at the same time and place. If a witness is
28 committed for failure to give bail to appear to testify at a trial or
29 hearing, the court on written motion of the witness and upon notice
30 to the parties may direct that his deposition be taken. After the
31 deposition has been subscribed the court may discharge the witness.

32 “(b) NOTICE OF TAKING.—The party at whose instance a deposition
33 is to be taken shall give to every party reasonable written notice of
34 the time and place for taking the deposition. The notice shall state
35 the name and address of each person to be examined. On motion of a
36 party upon whom the notice is served, the court for cause shown may
37 extend or shorten the time or change the place for taking the deposi-
38 tion. The officer having custody of a defendant shall be notified of
39 the time and place set for the examination and shall, unless the defend-
40 ant waives the right to be present, produce him at the examination
41 and keep him in the presence of the witness during the examination.

1 A defendant not in custody shall have the right to be present at the
2 examination upon request subject to such terms as may be fixed by
3 the court, but his failure, absent good cause shown, to appear after
4 notice and tender of expenses in accordance with subdivision (c) of
5 this rule shall constitute a waiver of that right and of any objection
6 to the taking and use of the deposition based upon that right.

7 “(c) Whenever a deposition is taken at the instance of the govern-
8 ment, or whenever a deposition is taken at the instance of a defendant
9 who is unable to bear the expense of the taking of the deposition, the
10 court may direct that the expenses of travel and subsistence of the
11 defendant and his attorney for attendance at the examination shall
12 be paid by the government.

13 “(d) HOW TAKEN.—Subject to such additional conditions as the
14 court shall provide, a deposition shall be taken and filed in the manner
15 provided in civil actions except as otherwise provided in these rules,
16 provided that (1) in no event shall a deposition be taken of a party
17 defendant without his consent, and (2) the scope and manner of exam-
18 ination and cross-examination shall be such as would be allowed in the
19 trial itself. The government shall make available to the defendant or
20 his counsel for examination and use at the taking of the deposition any
21 statement of the witness being deposed which is in the possession of the
22 government and to which the defendant would be entitled at the trial.

23 “(e) USE.—At the trial or upon any hearing, a part or all of a
24 deposition, so far as otherwise admissible under the rules of evidence,
25 may be used as substantive evidence if the witness is unavailable, as
26 defined in subdivision (g) of this rule, or the witness gives testimony
27 at the trial or hearing inconsistent with his deposition. Any deposition
28 may also be used by any party for the purpose of contradicting or
29 impeaching the testimony of the deponent as a witness. If only a part
30 of a deposition is offered in evidence by a party, an adverse party may
31 require him to offer all of it which is relevant to the part offered and
32 any party may offer other parts.

33 “(f) OBJECTION TO DEPOSITION TESTIMONY.—Objection to deposi-
34 tion testimony or evidence or parts thereof and the grounds for the
35 objection shall be stated at the time of the taking of the deposition.

36 “(g) UNAVAILABILITY.—‘Unavailable’ as a witness includes situa-
37 tions in which the declarant is: (1) exempted by ruling of the judge
38 on the ground of privilege from testifying concerning the subject mat-
39 ter of his statement; or (2) persistent in refusing to testify despite an
40 order of the judge to do so; or (3) unable to be present or to testify at

1 the hearing because of death or then existing physical or mental illness
2 or infirmity; or (4) absent from the hearing and beyond the jurisdic-
3 tion of the court to compel appearance and the proponent of his state-
4 ment has exercised reasonable diligence but has been unable to procure
5 his attendance.

6 “(h) DEPOSITION BY AGREEMENT NOT PRECLUDED.—Nothing in this
7 rule shall preclude the taking of a deposition, orally or upon written
8 questions, or the use of a deposition, by agreement of the parties with
9 the consent of the court.”

10 (f) (1) In subdivision (b) of Rule 16, Discovery and Inspection,
11 strike “to agent of the government except as provided in 18 U.S.C.
12 § 3500” and insert in lieu thereof “except as provided in Rule 16.1”.

13 (2) Immediately after Rule 16, insert the following new rules:

14 “RULE 16.1.—DEMANDS FOR PRODUCTION OF STATEMENT AND REPORTS
15 OF WITNESSES

16 “(a) GOVERNMENT WITNESS.—In any criminal prosecution brought
17 by the United States, no statement or report in the possession of the
18 United States which was made by a government witness or prospective
19 government witness (other than the defendant) shall be the subject of
20 subpoena, discovery, or inspection until said witness has testified on
21 direct examination in the trial of the case.

22 “(b) MOTION.—After a witness called by the United States has testi-
23 fied on direct examination, the court shall, on motion of the defendant,
24 order the United States to produce any statement of the witness in
25 the possession of the United States which relates to the subject matter
26 as to which the witness has testified. If the entire contents of any such
27 statement relate to the subject matter of the testimony of the witness,
28 the court shall order it to be delivered directly to the defendant for his
29 examination and use.

30 “(c) INSPECTION BY COURT.—If the United States claims that any
31 statement ordered to be produced under this rule contains matter
32 which does not relate to the subject matter of the testimony of the wit-
33 ness, the court shall order the United States to deliver such statement
34 for the inspection of the court *in camera*. Upon such delivery the court
35 shall excise the portions of such statement which do not relate to the
36 subject matter of the testimony of the witness. With such material
37 excised, the court shall then direct delivery of such statement to the
38 defendant for his use. If, pursuant to such procedure, any portion of
39 such statement is withheld from the defendant and the defendant
40 objects to such withholding, and the trial is continued to an adjudica-
41 tion of the guilt of the defendant, the entire text of such statement

1 shall be preserved by the United States and, in the event the defendant
2 appeals, shall be made available to the appellate court for the purpose
3 of determining the correctness of the ruling of the trial court. When-
4 ever any statement is delivered to a defendant pursuant to this rule, the
5 court in its discretion, upon application of said defendant, may recess
6 proceedings in the trial for such time as it may determine to be reason-
7 ably required for the examination of such statement by said defend-
8 ant and his preparation for its use in the trial.

9 “(d) DELETION OF TESTIMONY OR MISTRIAL.—If the United States
10 elects not to comply with an order of the court under subdivision (b)
11 or (c) of this rule to deliver to the defendant any such statement, or
12 such portion thereof as the court may direct, the court shall strike from
13 the record the testimony of the witness, and the trial shall proceed
14 unless the court in its discretion shall determine that the interests of
15 justice require that a mistrial be declared.

16 “(e) DEFINITION.—As used in this rule, in relation to any witness
17 called by the United States, ‘statement’ means:

18 “(1) a written statement made by said witness and signed or
19 otherwise adopted or approved by him;

20 “(2) a stenographic, mechanical, electrical, or other recording,
21 or a transcription thereof, which is a substantially verbatim re-
22 cital of an oral statement made by said witness and recorded
23 contemporaneously with the making of such oral statement, or

24 “(3) a statement, however taken or recorded, or a transcription
25 thereof, if any, made by said witness to a grand jury.

26 “RULE 16.2.—CAPITAL OFFENSE

27 “At least three days prior to a trial, a person charged with an offense
28 punishable by a sentence of death shall be furnished with: (1) a copy
29 of the indictment; (2) a list of the veniremen, including the address of
30 each member; and (3) a list of the witnesses to be produced at trial
31 by the government, including the address of each such person.”

32 (g) Insert immediately following Rule 23.—Trial by Jury or by the
33 Court, the following new rule:

34 “RULE 23.1.—TRIAL BY MAGISTRATE

35 “(a) ELECTION.—A person charged with an offense may elect to be
36 tried before a judge of the district court for the district in which the
37 offense was committed. The magistrate shall carefully explain to such
38 person that he has a right to a trial before a judge of the district court
39 and that, where he is charged with a felony, he may have a right to trial
40 by jury before such judge. A United States magistrate shall not pro-

ceed to try such case unless the person, after such explanation, signs a written consent to be tried before the magistrate and that such written consent specifically waives both a trial before a judge of the district court and any right to trial by jury that such person may have.

“(b) RECORD.—Proceedings before United States magistrates shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal, a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security for such payment, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

“(c) POWER.—A magistrate shall have power to place a person on probation and to revoke or reinstate the probation of any person granted probation by him.”

(h) Insert immediately following Rule 25.—Judge; Disability, the following new rule:

“RULE 25.1.—PRINCIPLES OF PROOF

“(a) PROOF BEYOND REASONABLE DOUBT.—No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. A person accused of an offense is presumed to be innocent until he is found guilty. The fact that a person has been arrested, confined, indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his trial.

“(b) INCLUDED OFFENSE.—A person charged with an offense may be found guilty of:

“(1) criminal attempt or criminal solicitation to commit the offense charged;

“(2) an offense listed in any section of the Federal Criminal Code designating the offense charged as an included offense; or

“(3) any designated included offense of such designated included offense.

“(c) PRESUMPTIONS.—When a statute establishes a presumption, it has the following consequences:

“(1) when there is evidence of facts which give rise to a presumption, the court shall submit the issue to the jury unless the evidence as a whole, including the evidence of facts giving rise to the presumption, clearly precludes a finding of the presumed fact beyond a reasonable doubt;

“(2) in submitting the issue of the presumed fact to a jury, the court shall instruct the jury that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the

1 jury may arrive at that judgment on the basis of the presumption
2 alone, since the law permits the jury to regard the facts giving rise
3 to the presumption as sufficient evidence of the fact presumed.

4 “(d) PRIMA FACIE CASE.—When a statute declares that given facts
5 constitute a prima facie case, proof of such facts warrants submission
6 of a case to the jury with the usual instructions on burden of proof
7 and without additional instructions attributing any special probative
8 force to the facts proved.

9 “(e) BAR TO PROSECUTION.—A bar to prosecution shall be established
10 by the defendant by a preponderance of the evidence to the court sit-
11 ting without a jury.

12 “(f) DEFENSE.—The United States need not negate a defense by al-
13 legation in the indictment, information, or other charge, or by proof.
14 When a statute defining an offense, a related statute, or a rule, regula-
15 tion, or order issued under such statute, contains a provision constitut-
16 ing an exception from criminal liability for conduct which would other-
17 wise be included within the prohibition of the offense, it is a defense
18 that the defendant came within such exception. If raised by significant
19 evidence, a defense must be disproved beyond a reasonable doubt for
20 the United States.

21 “(g) AFFIRMATIVE DEFENSE.—The United States need not negate a
22 defense which a statute explicitly designates as an ‘affirmative defense.’
23 A defense so designated must be proved by the defendant by a pre-
24 ponderance of evidence.”

25 (i) Insert immediately following Rule 26.1.—Determination of For-
26 eign Law, the following new rule:

27 “RULE 26.2.—FOREIGN DOCUMENTS

28 “(a) GENERAL.—Any book, paper, statement, record, account, writ-
29 ing, or other document, or any portion thereof, of whatever character
30 and in whatever form, as well as any copy thereof equally with the
31 original, which is not in the United States shall, when duly certified
32 as provided in subdivision (d) of this rule, be admissible in evidence
33 in any criminal action or proceeding in any court of the United States
34 if the court shall find, from all the testimony taken with respect to
35 such foreign document pursuant to a commission excuted under sub-
36 division (b) of this rule that such document (or the original thereof
37 in case such a document is a copy) satisfies the requirements of sec-
38 tion 7132, title 28, United States Code, unless in the event that the
39 genuineness of such document is denied, any party to such criminal
40 action or proceeding making such denial shall establish to the satis-

1 faction of the court that such document is not genuine. Nothing in this
2 rule shall be deemed to require authentication under subdivision (d)
3 of this rule of any such foreign documents which may otherwise be
4 properly authenticated by law.

5 “(b) COMMISSION TO CONSULAR OFFICERS.—(1) The testimony of
6 any witness in a foreign country may be taken either on oral or writ-
7 ten interrogatories, or on interrogatories partly oral and partly writ-
8 ten, pursuant to a commission issued, as hereinafter provided, for the
9 purpose of determining whether any foreign documents sought to be
10 used in any criminal action or proceeding in any court of the United
11 States are genuine, and whether the requirements of section 1732,
12 title 28 are satisfied with respect to any such document (or the original
13 thereof in case such document is a copy). Application for the issuance
14 of a commission for such purpose may be made to the court in which
15 such action or proceeding is pending by the United States or any
16 other party thereto, after five days notice in writing by the applicant
17 party, or his attorney, to the opposite party, or his attorney of record,
18 which notice shall state the names and addresses of witnesses whose
19 testimony is to be taken and the time when it is desired to take such
20 testimony. In granting such application the court shall issue a com-
21 mission for the purpose of taking the testimony sought by the appli-
22 cant addressed to any consular officer of the United States conven-
23 iently located for the purpose. In cases of testimony taken on oral
24 or partly oral interrogatories, the court shall make provisions in the
25 commission for the selection as hereinafter provided of foreign counsel
26 to represent each party (except the United States) to the criminal
27 action or proceeding in which the foreign documents in question are
28 to be used, unless such party has, prior to the issuance of the commis-
29 sion, notified the court that he does not desire the selection of foreign
30 counsel to represent him at the time of taking of such testimony. In
31 cases of testimony taken on written interrogatories, such provision
32 shall be made only upon the request of any such party prior to the
33 issuance of such commission. Selection of foreign counsel shall be
34 made by the party whom such foreign counsel is to represent within
35 ten days prior to the taking of testimony or by the court from which
36 the commission issued, upon the request of such party made within
37 such time.

38 “(2) Any consular officer to whom a commission is addressed to
39 take testimony, who is interested in the outcome of the criminal action
40 or proceeding in which the foreign documents in question are to be
41 used or has participated in the prosecution of such action or proceed-

1 ing, whether by investigation, preparation of evidence, or otherwise,
2 may be disqualified on his own motion or on that of the United States
3 or any other party to such criminal action or proceeding made to the
4 court from which the commission issued at any time prior to the
5 execution thereof. If after notice and hearing, the court grants the
6 motion, it shall instruct the consular officer thus disqualified to send
7 the commission to any other consular officer of the United States
8 named by the court, and such other officer shall execute the commis-
9 sion according to its terms and shall for all purposes be deemed the
10 officer to whom the commission is addressed.

11 “(3) The provisions of this section applicable to consular officers
12 shall be applicable to diplomatic officers pursuant to such regulations
13 as may be prescribed by the President.

14 “(c) DEPOSITION TO AUTHENTICATE FOREIGN DOCUMENT.—The con-
15 sular officer to whom any commission authorized under subdivision
16 (b) of this rule is addressed shall take testimony in accordance with
17 its terms. Every person whose testimony is taken shall be cautioned
18 and sworn to testify the whole truth and shall be carefully examined.
19 His testimony shall be reduced to writing or typewriting by the con-
20 sular officer taking the testimony, or by some person under his personal
21 supervision, or by the witness himself, in the presence of the consular
22 officer and by no other person, and shall, after it has been reduced to
23 writing or typewriting, be subscribed by the witness. Every foreign
24 document, with respect to which testimony is taken, shall be annexed
25 to such testimony and subscribed by each witness who appears for the
26 purpose of establishing the genuineness of such document. When
27 counsel for all the parties attend the examination or any witness
28 whose testimony is to be taken on written interrogatories, they may
29 consent that oral interrogatories in addition to those accompanying
30 the commission may be put to the witness. The consular officer taking
31 any testimony shall require an interpreter to be present when his
32 services are needed or are requested by any party or his attorney.

33 “(d) CERTIFICATION OF GENUINENESS OF FOREIGN DOCUMENT.—If
34 the consular officer executing any commission authorized under sub-
35 division (b) of this rule shall be satisfied, upon all the testimony taken,
36 that a foreign document is genuine, he shall certify such document to
37 be genuine under the seal of his office. Such certification shall include
38 a statement that he is not subject to disqualification under the pro-
39 visions of subdivision (b) of this rule. He shall thereupon transmit,
40 by mail, such foreign documents, together with the record of all testi-
41 mony taken and the commission which has been executed, to the clerk

of the court from which such commission issued, in the manner in which his official dispatches are transmitted to the government. The clerk receiving any executed commission shall open it and shall make any foreign documents and record of testimony, transmitted with such commission, available for inspection by the parties to the criminal action or proceeding in which such documents are to be used, and said parties shall be furnished copies of such documents free of charge.

“(e) FEES AND EXPENSES.—(1) The consular fees prescribed under section 1201, title 22, United States Code, for official services in connection with the taking of testimony under this section, and the fees of any witness whose testimony is taken shall be paid by the party who applied for the commission pursuant to which such testimony was taken. Every witness under subdivision (c) of this rule shall be entitled to receive, for each day’s attendance, fees perscribed under subdivision (f) of this rule. Every foreign counsel selected pursuant to a commission issued on application of the United States, and every interpreter whose services are required by a consular officer under subdivision (c) of this rule, shall be paid by the United States such compensation, together with such personal and incidental expenses upon verified statements filed with the consular officer, as he may allow. Compensation and expenses of foreign counsel selected pursuant to a commission issued on application of any party other than the United States shall be paid by the party whom such counsel represents and shall be allowed in the same manner.

“(2) Whenever any party makes affidavit, prior to the issuance of a commission for the purpose of taking testimony, that he is not possessed of sufficient means and is actually unable to pay any fees and costs incurred under this rule, such fees and costs shall, upon order of the court, be paid in the same manner as fees and costs are paid which are chargeable to the United States.”

(j) Immediately following Rule 28.—Expert Witnesses and Interpreters, insert the following new rule :

“RULE 28.1.—ACCUSED AS WITNESS

“In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him.”

(k) (1) Immediately following Rule 31.—Verdict, a new Rule 32 is inserted as follows :

1 "RULE 32.—PRESENTENCING PROCEDURES

2 "(a) PRESENTENCE COMMITMENT.—When a person has been con-
3 victed of a felony, and the court is of the opinion that imprisonment
4 presently appears to be warranted, the court may commit such offender
5 to the custody of the Bureau of Corrections for a period not exceeding
6 90 days. The Bureau shall conduct a complete study of the offender
7 during that time, inquiring into such matters as the offender's previous
8 delinquency or criminal experience, his social background, his capa-
9 bilities, his mental, emotional, and physical health, the significant
10 problem or problems involved in the offense of which he has just
11 been convicted, and the rehabilitative resources or programs which
12 may be available to suit his needs. By the expiration of such addi-
13 tional time as the court shall grant, not exceeding a further period
14 of 90 days, the offender shall be returned to the court for final
15 sentencing. The court shall be provided with a written report of the
16 results of the study, including whatever recommendations the Bureau
17 believes will be helpful to a proper resolution of the case. After re-
18 ceiving the report and the recommendations, the court shall proceed
19 finally to sentence the offender in accordance with the sentencing
20 alternatives available under section 1-4A1 of the Federal Criminal
21 Code.

22 "(b) PRESENTENCE INVESTIGATION.—In any other case, before mak-
23 ing a disposition, the court may order a presentence investigation made
24 by the Federal probation service which shall submit a report of its
25 investigation to the court. The report shall be in writing and, so far as
26 practicable, shall include an analysis of the circumstances attending
27 the commission of the offense, the offender's history of delinquency or
28 criminality, physical and mental condition, family situation and
29 background, social, economic, and educational background, job ex-
30 perience and occupational skills and aptitude, personal habits, and
31 any other matters that the probation officer deems relevant or the
32 court directs to be included.

33 "(c) MAGISTRATE.—A magistrate who exercises trial jurisdiction and
34 before whom a person is convicted or pleads either guilty or nolo
35 contendere may, with the approval of a judge of the district court,
36 direct the probation service of the court to conduct a presentence
37 investigation on that person and render a report to the magistrate
38 prior to the imposition of sentence.

39 "(d) EXAMINATION OF REPORTS.—Before imposing sentence, the
40 court or magistrate shall permit the attorney for the government and
41 counsel for the offender, or the offender if he is not represented by

1 counsel, to inspect the presentence reports sufficiently as to afford a rea-
2 sonable opportunity for verification prior to final sentencing. In ex-
3 traordinary cases, the court may withhold material not relevant to a
4 proper sentence, diagnostic opinion which might seriously disrupt a
5 program of rehabilitation and any source of confidential information.
6 A court withholding all or part of a presentence report shall inform
7 the parties of its action and place in the record the reasons therefor.
8 The court may require parties inspecting all or part of a presentence
9 report to give notice of any part thereof intended to be controverted.

10 “(e) **RELEASE PLAN.**—Before final sentencing, each offender shall
11 be encouraged to prepare a release plan, setting forth the manner of
12 life he intends to lead if released on probation or conditional discharge,
13 including such specific information as where and with whom he will
14 reside and what occupation or employment he will follow or attempt
15 to pursue. The probation service shall render reasonable aid to the
16 offender in the preparation of such plan and in securing information
17 for submission to the sentencing judge or magistrate.

18 “(f) **USE OF INFORMATION.**—No limitation shall be placed on the
19 information concerning the background, character, and conduct of
20 a person convicted of an offense which a court of the United States
21 may receive and consider for the purpose of imposing an appropriate
22 sentence.”

23 (2) The present Rule 32, Sentence and Judgment, is redesignated
24 “Rule 32.1.—Sentence and Judgment” and amended by the addition of
25 the following subdivisions:

26 “(g) **MODIFICATION OF PROBATION.**—During the period of probation
27 or conditional discharge, upon application of a probation officer or
28 of the offender or upon its own motion, the court may, after a hearing
29 upon notice to the probation officer, the offender, and the attorney for
30 the government, modify the requirements imposed on the offender or
31 add further conditions of release authorized by statute. The court shall
32 modify any requirement that in its opinion imposes an unreasonable
33 burden on the offender. The court, on application of a probation of-
34 ficer or of the offender or upon its own motion, may discharge the of-
35 fender at any time.

36 “(h) **PROBATION A FINAL JUDGMENT.**—Notwithstanding the fact that
37 probation can subsequently be modified or revoked, a judgment which
38 includes such a disposition is a final judgment for all other purposes.

39 “(i) **ARREST OF PROBATIONER.**—At any time within the period of
40 probation, or within the maximum probation period authorized, the
41 court for the district in which the probationer is being supervised or

1 if he is no longer under supervision, the court for the district in which
2 he was last under supervision, may issue a warrant for his arrest for
3 violation of probation occurring during the period of probation. Such
4 warrant may be executed in any district by the probation officer or
5 the United States marshal of the district in which the warrant was
6 issued or of any district in which the probationer is found. If the pro-
7 bationer shall be arrested in any district other than that in which he
8 was last supervised, he shall be returned to the district in which the
9 warrant was issued, unless jurisdiction over him is transferred to
10 the district in which he is found, and in that case he shall be detained
11 pending further proceedings in such district. As speedily as possible
12 after arrest the probationer shall be taken before the court for the dis-
13 trict having jurisdiction over him."

14 (1) Immediately following Rule 32.1, as added by this title, insert
15 the following new rules:

16 "RULE 32.2.—SENTENCING DANGEROUS SPECIAL OFFENDER

17 "(a) NOTICE.—Whenever an attorney for the government has rea-
18 son to believe that a defendant who is charged with a felony in a
19 court of the United States is a dangerous special offender, such at-
20 torney may sign and file with the court, a reasonable time before
21 trial or acceptance by the court of a plea of guilty or nolo con-
22 tendere, a notice specifying that the defendant is a dangerous special
23 offender who upon conviction of such felony is subject to the imposi-
24 tion of a sentence as a dangerous special offender and setting out with
25 particularity the reason why such attorney believes the defendant to
26 be a dangerous special offender. Such notice may also be filed by the
27 court on its own motion at any time. In no case shall the fact that the
28 defendant is alleged to be such an offender be an issue upon the trial of
29 such felony or be disclosed to the jury. If the court finds that the filing
30 of such notice as a public record may prejudice fair consideration of a
31 pending criminal matter, it may order the notice sealed and the notice
32 shall not be subject to subpoena or public inspection during the pend-
33 ency of such criminal matter, except on order of the court, but shall
34 be subject to inspection by the defendant who is alleged to be a dan-
35 gerous special offender or his counsel.

36 "(b) HEARING.—Upon any plea of guilty or nolo contendere or ver-
37 dict or finding of guilty of such felony, a hearing shall be held by the
38 court sitting without a jury before sentence is imposed. Except in the
39 most extraordinary cases, the court shall obtain both a presentence
40 commitment and a presentence investigation report before holding a
41 hearing under this subdivision. The court shall fix a time for the hear-

ing, and notice thereof shall be given to the defendant and the attorney for the government at least ten days prior thereto. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence reports as the court relies on, that the defendant is a dangerous special offender and that an upper-range term of imprisonment is necessary for the protection of the public, the court shall sentence the defendant to imprisonment for an appropriate term as authorized by statute. The court shall place in the record its findings, including an identification of the information relied upon in making such findings and its reasons for the sentence imposed.

"RULE 32.3.—PROBATION OFFICERS

"(a) APPOINTMENT.—A district court of the United States may appoint suitable and qualified persons to serve as probation officers within the jurisdiction and under the direction of the court making such appointment. Such court may, in its discretion, remove a probation officer serving in such court.

"(b) RECORD OF APPOINTMENT.—The appointment of a probation officer shall be in writing and shall be entered on the records of the court, and a copy of the order of appointment shall be delivered to the officer so appointed and a copy shall be sent to the Director of the Administrative Office of the United States Courts.

"(c) CHIEF PROBATION OFFICER.—Whenever such court shall have appointed more than one probation officer, one may be designated chief probation officer and shall direct the work of all probation officers serving in such court."

(m) Rule 40.—Commitment to Another District; Removal, is amended by adding at the end thereof the following subdivision:

"(c) WARRANT FOR REMOVAL.—Only one writ or warrant is necessary to remove a person from one district to another. One copy of such writ may be delivered to the sheriff or jailer from whose custody the person is taken, and another to the sheriff or jailer to whose custody he is committed, and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he is removed."

(n) Rule 41.—Search and Seizure, is amended by adding at the end thereof the following subdivisions:

“(i) OTHER GROUNDS FOR ISSUANCE.—In addition to other specified grounds, a warrant may be issued to search for and seize evidence of a criminal offense in violation of the laws of the United States.

“(j) PERSONS AUTHORIZED TO SERVE.—A search warrant may in all cases be served by any of the officers mentioned in its direction or by an officer authorized by law to serve such warrant, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

“(k) USE OF FORCE.—The officer may break open any outer or inner door or window of a house, or any part of a house, or anything in such house, to execute a search warrant if, after notice of his authority and purpose, he is refused admittance, or when necessary to liberate himself or a person aiding him in the execution of the warrant.”

(o) Immediately following Rule 42.—Criminal Contempt, insert the following new rules:

“RULE 42.1.—JURY TRIAL FOR CONTEMPT IN LABOR CASES

“In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein such alleged contempt shall have been committed. This rule shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

“RULE 42.2.— SECURITY OF THE PEACE AND GOOD BEHAVIOR

“The justices or judges of the United States, the United States magistrates, and the judges and magistrates of the several States, who are or may be authorized by law to order arrests for offenses against the United States, shall have the same authority to hold to security of the peace and good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them.”

(p) Immediately following Rule 44.—Right to and Assignment of Counsel, insert a new rule as follows:

1 **"RULE 44.1.—COUNSEL**

2 **"(a) PLAN.**—Each district court of the United States, with the
3 approval of the judicial council of the circuit, shall place in operation
4 throughout the district a plan for furnishing representation for any
5 person financially unable to obtain adequate representation:

6 **"(1)** who is charged with an offense or with juvenile delin-
7 quency by the commission of an act which, if committed by an
8 adult, would be such an offense, or with a violation of probation
9 or parole;

10 **"(2)** who is under arrest, when such representation is required
11 by law; or

12 **"(3)** who is in custody as a material witness or seeking collat-
13 eral relief as provided in subdivision (h) of this rule.

14 **"(b) CHOICE OF PLAN.**—Representation under each plan shall in-
15 clude counsel and investigative, expert, and other services necessary
16 for an adequate defense. Each plan may include a provision for pri-
17 vate attorneys in a proportion of the cases, either of the following
18 or both:

19 **"(1)** attorneys furnished by a bar association or a legal aid
20 agency; or

21 **"(2)** attorneys furnished by a defender organization established
22 in accordance with the provisions of subdivision (h) of this rule.

23 **"Prior to approving the plan for a district, the judicial council of**
24 **the circuit shall supplement the plan with provisions for representa-**
25 **tion on appeal. The district court may modify the plan at any time**
26 **with the approval of the judicial council of the circuit and it shall**
27 **modify the plan when directed to do so by such judicial council. The**
28 **district court shall notify the Administration Office of the United**
29 **States Courts of any modification of its plan.**

30 **"(c) APPOINTMENT OF COUNSEL.**—Counsel furnishing representa-
31 tion under the plan shall be selected from a panel of attorneys desig-
32 nated or approved by the court, or from a bar association, legal aid
33 agency, or defender organization furnishing representation pursuant
34 to the plan. In every criminal case in which the defendant is charged
35 with any such offense, the court or magistrate shall advise the de-
36 fendant that he has the right to be represented by counsel and that
37 counsel will be appointed to represent him if he is financially unable
38 to obtain counsel. Unless the defendant waives representation by coun-
39 sel, the court or magistrate, if satisfied after appropriate inquiry that
40 the defendant is financially unable to obtain counsel, shall appoint
41 counsel to represent him. Such appointment may be made retroactive

1 to include any representation furnished pursuant to the plan prior to
2 appointment. The court or magistrate shall appoint separate counsel
3 for defendants having interests that cannot properly be represented by
4 the same counsel, or when other good cause is shown.

5 “(d) DURATION AND SUBSTITUTION OF APPOINTMENTS.—A person for
6 whom counsel is appointed shall be represented at every stage of the
7 proceedings from his initial appearance before a magistrate through
8 appeal, including ancillary matters appropriate to the proceedings.
9 If at any time after the appointment of counsel the court or magistrate
10 finds that the person is financially able to obtain counsel or to make
11 partial payment for the representation, it may terminate the appoint-
12 ment of counsel or direct payment as provided in subdivision (f) of
13 this rule, as the interests of justice may dictate. If at any stage of the
14 proceedings, including an appeal, the court or magistrate finds that the
15 person is financially unable to pay counsel whom he had retained, it may
16 appoint counsel as provided in subdivision (b) of this rule and author-
17 ize payment as provided in subdivision (d) of this rule, as the interests
18 of justice may dictate. The court or magistrate may, in the interests of
19 justice, substitute one appointed counsel for another at any stage of
20 the proceedings.

21 “(e) PAYMENT FOR REPRESENTATION.—

22 “(1) HOURLY RATE.—An attorney appointed pursuant to this
23 rule, or a bar association, legal aid agency, or community defender
24 organization which has provided the appointed attorney shall, at
25 the conclusion of the representation or any segment thereof, be
26 compensated at a rate not exceeding \$30 per hour for time ex-
27 pended in court or before a magistrate and \$20 per hour for time
28 reasonably expended out of court, or such other hourly rate, fixed
29 by the judicial council of the circuit, not to exceed the minimum
30 hourly scale established by a bar association for similar services
31 rendered in the district. Such attorney shall be reimbursed for
32 expenses reasonably incurred, including the costs of transcripts
33 authorized by the magistrate or court.

34 “(2) MAXIMUM AMOUNTS.—For representation of a defendant
35 before the United States magistrate or the district court, or both,
36 the compensation to be paid to an attorney, or to a bar association,
37 legal aid agency, or community defender organization shall not
38 exceed \$1,000 for each attorney in a case in which one or more of-
39 fenses for which a term of imprisonment in excess of one year
40 is authorized by law is charged, and \$400 for each attorney in a

1 case in which one or more offenses for which a term of imprison-
2 ment in excess of six months but not in excess of one year is
3 charged. For representation of a defendant in an appellate court,
4 the compensation to be paid to an attorney, or to a bar association,
5 legal aid agency, or community defender organization shall not
6 exceed \$1,000 for each attorney in each court. For representation
7 in connection with a post-trial motion made after the entry of
8 judgment or in a probation or parole revocation proceeding or
9 for representation provided under subdivision (g) of this rule,
10 the compensation shall not exceed \$250 for each attorney in each
11 proceeding.

12 “(3) **WAIVING MAXIMUM AMOUNTS.**—Payment in excess of any
13 maximum amount provided in paragraph (2) may be made for
14 extended or complex representation whenever the court in which
15 the representation was rendered, or the magistrate if the repre-
16 sentation was furnished exclusively before him, certifies that the
17 amount of the excess payment is necessary to provide fair compen-
18 sation and the payment is approved by the chief judge of the
19 circuit.

20 “(4) **FILING CLAIMS.**—A separate claim for compensation and
21 reimbursement shall be made to the district court for representa-
22 tion before the magistrate and the court, and to each appellate
23 court before whom the attorney represented the defendant. Each
24 claim shall be supported by a sworn written statement specifying
25 the time expended, services rendered, and expenses incurred while
26 the case was pending before the magistrate and the court, and
27 the compensation and reimbursement applied for or received in
28 the same case from any other source. The court shall fix the com-
29 pensation and reimbursement to be paid to the attorney, or to
30 the bar association, legal aid agency, or community defender
31 organization which provided the appointed attorney. In cases
32 where representation is furnished exclusively before a United
33 States magistrate, the claim shall be submitted to him and he
34 shall fix the compensation and reimbursement to be paid. In cases
35 where representation is furnished other than before the United
36 States magistrate, the district court, or an appellate court, claims
37 shall be submitted to the district court which shall fix the com-
38 pensation and reimbursement to be paid.

39 “(5) **NEW TRIALS.**—For purposes of compensation and other
40 payments authorized by this section, an order by a court granting
41 a new trial shall be deemed to initiate a new case.

1 “(6) PROCEEDINGS BEFORE APPELLATE COURTS.—If a person for
2 whom counsel is appointed under this section appeals to an ap-
3 pellate court or petitions for a writ of certiorari, he may do so
4 without prepayment of fees and costs, or security therefor, and
5 without filing the affidavit required by section 1915(a), title 28,
6 United States Code.

7 “(f) SERVICES OTHER THAN COUNSEL.—

8 “(1) UPON REQUEST.—Counsel for a person who is financially
9 unable to obtain investigative, expert, or other services necessary
10 for an adequate defense may request them in an ex parte applica-
11 tion. Upon a finding, after appropriate inquiry in an ex parte pro-
12 ceeding, that the services are necessary and that the person is
13 financially unable to obtain them, the court or the magistrate shall
14 authorize counsel to obtain them.

15 “(2) WITHOUT PRIOR REQUEST.—Counsel appointed under this
16 rule may obtain, subject to later review, investigative, expert, or
17 other services without prior authorization if necessary for an
18 adequate defense. The total cost of services obtained without prior
19 authorization may not exceed \$150 and expenses reasonably
20 incurred.

21 “(3) MAXIMUM AMOUNTS.—Compensation to be paid to a per-
22 son for services rendered by him to a person under this sub-
23 division, or to be paid to an organization for services rendered by
24 an employee thereof, shall not exceed \$300, exclusive of reimburse-
25 ment for expenses reasonably incurred, unless payment in excess of
26 that limit is certified by the court or the magistrate as necessary
27 to provide fair compensation for services of an unusual character
28 or duration, and the amount of the excess payment is approved by
29 the chief judge of the circuit.

30 “(g) RECEIPT OF OTHER PAYMENTS.—Whenever the magistrate or
31 the court finds that funds are available for payment from or on behalf
32 of a person furnished representation, it may authorize or direct that
33 such funds be paid to the appointed attorney, to the bar association,
34 legal aid agency, or community defender organization which provided
35 the appointed attorney, to any person or organization authorized pur-
36 suant to subdivision (e) of this rule to render investigative, expert,
37 or other services, or to the court for deposit in the Treasury as a re-
38 imbursement to the appropriation, current at the time of payment, to
39 carry out the provisions of this rule. Except as so authorized or
40 directed, no such person or organization may request or accept any
41 payment or promise of payment for representing a defendant.

1 “(h) DISCRETIONARY APPOINTMENTS.—Any person in custody as a
2 material witness or seeking relief under section 2241, 2254, or 2255 of
3 title 28, United States Code, may be furnished representation pursuant
4 to the plan whenever the United States magistrate or the court deter-
5 mines that the interests of justice so require and such person is finan-
6 cially unable to obtain representation. Payment for such representa-
7 tion may be as provided in subdivisions (d) and (e) of this rule.

8 “(i) DEFENDER ORGANIZATION.—

9 “(1) QUALIFICATIONS.—A district or a part of a district in
10 which at least 200 persons annually require the appointment
11 of counsel may establish a defender organization as provided
12 under paragraph (2) of this subdivision. Two adjacent districts
13 or parts of districts may aggregate the number of persons required
14 to be represented to establish eligibility for a defender organiza-
15 tion to serve both areas. If the adjacent districts or parts of dis-
16 tricts are located in different circuits, the plan for furnishing
17 representation shall be approved by the judicial council of each
18 circuit.

19 “(2) TYPES OF DEFENSE ORGANIZATION.—

20 “(i) FEDERAL PUBLIC DEFENDER ORGANIZATION.—A Federal
21 Public Defender Organization shall consist of one or more
22 full-time salaried attorneys. An organization for a district
23 or part of a district or two adjacent districts or parts of
24 districts shall be supervised by a Federal Public Defender
25 appointed by the judicial council of the circuit, without
26 regard to the provisions of title 5, United States Code,
27 governing appointments in the competitive service, after
28 considering recommendations from the district court or courts
29 to be served. Nothing contained herein shall be deemed to
30 authorize more than one Federal Public Defender within a
31 single judicial district. The Federal Public Defender shall be
32 appointed for a term of four years, unless sooner removed by
33 the judicial council of the circuit for incompetency, miscon-
34 duct in office, or neglect of duty. The compensation of the
35 Federal Public Defender shall be fixed by the judicial council
36 of the circuit at a rate not to exceed the compensation received
37 by the United States attorney for the district where repre-
38 sentation is furnished or, if two districts or parts of districts
39 are involved, the compensation of the higher paid United
40 States attorney in the district where representation is fur-
41 nished or if two districts or parts of districts are involved, the

1 compensation of the higher paid United States attorney of
2 the districts. The Federal Public Defender may appoint,
3 without regard to the provisions of title 5 of the United
4 States Code, governing appointments in the competitive
5 service, full-time attorneys in such number as may be ap-
6 proved by the judicial council of the circuit and other
7 personnel in such number as may be approved by the Director
8 of the Administrative Office of the United States Courts.
9 Compensation paid to such attorneys and other personnel of
10 similar qualifications and experience in the office of the United
11 States attorney in the district where representation is fur-
12 nished or, if two districts or parts of districts are involved,
13 the higher compensation paid to persons of similar qualifica-
14 tions and experience in the districts. Neither the Federal
15 Public Defender nor any attorney so appointed by him may
16 engage in the private practice of law. Each organization shall
17 submit to the Director of the Administrative Office of the
18 United States Courts, at the time and in the form prescribed
19 by him, reports of its activities, financial position, and pro-
20 posed budget. The Director of the Administrative Office of
21 the United States Courts shall submit, similarly as under sec-
22 tion 605, title 28, United States Code, and subject to the
23 conditions of that section, a budget for each organization for
24 each fiscal year and out of the appropriations therefor shall
25 make payments to and on behalf of each organization. Pay-
26 ments under this subparagraph to an organization shall be in
27 lieu of payments under subdivision (d) or (e) of this rule.

28 “(ii) COMMUNITY DEFENDER ORGANIZATION.—A Commu-
29 nity Defender Organization shall be a nonprofit defense
30 counsel service established and administered by any group
31 authorized by the plan to provide representation. The orga-
32 nization shall be eligible to furnish attorneys and receive pay-
33 ments under this rule if its bylaws are set forth in the plan
34 of the district or districts in which it will serve. Each or-
35 ganization shall submit to the Judicial Conference of the
36 United States an annual report setting forth its activities
37 and financial position and the anticipated caseload and ex-
38 penses for the coming year. Upon application an organiza-
39 tion may, to the extent approved by the Judicial Conference
40 of the United States:

1 “(A) receive an initial grant for expenses necessary to
2 establish the organization; and

3 “(B) in lieu of payments under subdivision (d) or
4 (e) of this rule, receive periodic sustaining grants to
5 provide representation and other expenses pursuant to
6 this rule.”

7 (p) Immediately following Rule 46.—Release from Custody, insert
R the following new rules:

9 “RULE 46.1.—RELEASE PENDING TRIAL

10 “(a) GENERAL.—Except as otherwise provided, a person charged
11 with an offense, other than an offense punishable by death, shall, at
12 his appearance before a judicial officer be ordered released pending
13 trial on his personal recognizance or upon execution of an unsecured
14 appearance bond in an amount specified by the judicial officer, unless
15 the officer in the exercise of his discretion determines that such a
16 release will not reasonably assure the appearance of the person as
17 required, in which case the judicial officer may release the person on
18 special conditions pending trial. Bail may be taken by any court,
19 judge, or magistrate authorized to arrest and commit offenders.

20 “(b) FACTORS.—In determining whether to release a person on his
21 personal recognizance or execution of an unsecured appearance bond,
22 or on special conditions, and if on special conditions, in determining
23 which special condition or conditions to impose, the judicial officer
24 shall consider the following factors:

25 “(1) the nature, circumstances, and seriousness of the offense
26 charged, and the weight of the evidence against the person
27 charged;

28 “(2) the person’s record of appearance at court proceedings,
29 or of flight to avoid prosecution, or of failure to appear at court
30 proceedings;

31 “(3) the person’s family ties, friends, religious and organiza-
32 tional affiliations, length of residence in the community in which
33 he presently lives, number of times that he has changed his resi-
34 dence in the preceding five years;

35 “(4) the person’s physical and mental condition, social, eco-
36 nomic, and educational background, financial position, employ-
37 ment and job experience, occupational skills and aptitudes, history
38 of delinquency or criminality, if any;

39 “(5) the plan, if any, prepared and filed by the person charged
40 setting forth the circumstances in which he would live if released
41 on special conditions, including such specific information as where

1 and with whom he would reside and what occupation, employ-
2 ment, or other activity he would follow or attempt to pursue;

3 “(6) the financial, vocational, educational, medical, counseling,
4 and other supportive services available to the person charged in
5 the community; and

6 “(7) any other matters or circumstances which the judicial of-
7 ficer deems relevant.

8 “(c) SPECIAL CONDITIONS.—The judicial officer may, in addition to
9 or in lieu of release on personal recognizance or upon the execution of
10 an unsecured appearance bond, make release pending trial contingent
11 on compliance by the person charged with any one or any combination
12 of the following special conditions. The judicial officer may, as a condi-
13 tion of release, direct the person to :

14 “(1) deposit with the court any of the following—his motor ve-
15 hicle operator’s license, motor vehicle registration card, gasoline
16 or other credit cards, United States or foreign passport, savings
17 bank passbook or passbooks, any item of personal property of par-
18 ticular sentimental or other significance to the person, or any other
19 document, instrument, or other property which would be useful to
20 a person attempting flight to avoid prosecution or the forfeiture
21 of which in the event of flight might serve to deter such flight;

22 “(2) require the execution of an appearance bond in a specified
23 amount and the deposit in the registry of the court, in cash or
24 other security as directed, of a sum not to exceed 10 per centum of
25 the amount of the bond, such deposit to be returned upon the per-
26 formance of the conditions of release;

27 “(3) appear in person at the court or at the police station near-
28 est his place of residence to sign a register, at an interval or fre-
29 quency set by the judicial officer, but which shall not be more than
30 once every twenty-four hours;

31 “(4) reside with, near, or in a residence owned by or under the
32 control of a named relative, friend, person, or organization, upon
33 the agreement of such person or organization to:

34 “(i) assume responsibility, so far as practicable, for the
35 person’s appearance in court at the designated times and
36 places; and

37 “(ii) notify the court promptly of any known violation or
38 possible violation by the person of any of the conditions of
39 release.
40

1 This condition shall not be imposed where it is impossible
2 of fulfillment, nor shall release be denied because of inability
3 to meet this condition;

4 “(5) refrain from possessing any firearm or other specified dan-
5 gerous weapon;

6 “(6) refrain from frequenting specified places or consorting
7 with specified persons;

8 “(7) refrain from excessive use of alcohol or any use of danger-
9 ous, abusable, or restricted drugs;

10 “(8) remain within the jurisdiction of the court, unless granted
11 permission to leave;

12 “(9) promptly notify the court of any change in residence or
13 employment;

14 “(10) participate in a supervised rehabilitation program which
15 may include treatment, counseling, training, and education;

16 “(11) comply, so far as practicable, with the terms and ob-
17 jectives of the release plan filed with the court, if any, and
18 notify the court of any changes or amendments to such plan; and

19 “(12) comply with any other condition or conditions deemed
20 by the judicial officer to be likely to result in the appearance of
21 the person charged at the times and places required.

22 “(d) CERTIFICATE.—A judicial officer authorizing the release of a
23 person pursuant to this section shall issue an appropriate order con-
24 taining a statement of the conditions imposed, if any, inform such
25 person of the penalties applicable to violations of the special condi-
26 tions of his release and advise him that a warrant for his arrest will
27 be issued immediately upon any such violation. A copy or certificate
28 of the conditions imposed shall be furnished to the person.

29 “(e) RECONSIDERATION.—A person for whom special conditions of
30 release are imposed and who after twenty-four hours from the time
31 of the release hearing continues to be detained as a result of his in-
32 ability to meet the conditions of release, shall, upon application, be
33 entitled to have the conditions reconsidered by the judicial officer who
34 imposed them. Unless the conditions of release are amended and the
35 person is thereupon released, the judicial officer shall set forth in
36 writing the reasons for requiring the conditions imposed. If the ju-
37 dicial officer who imposed conditions of release is not available, any
38 other judicial officer in the district may review such conditions.

39 “(f) MODIFICATION.—A judicial officer ordering the release of a
40 person on any condition specified in this section may at any time amend
41 his order to impose additional or different conditions of release. If the

1 imposition of such additional or different conditions results in the
2 detention of the person as a result of his inability to meet such condi-
3 tions, the provisions of subdivision (e) of this rule shall apply.

4 “(g) EVIDENCE.—Information stated in, or offered in connection
5 with, any order entered pursuant to this section need not conform to
6 the rules pertaining to the admissibility of evidence in a court of law.

7 “(h) NOT EXCLUSIVE.—Nothing contained in this rule shall prevent
8 the disposition of any case or class of cases by forfeiture of collateral
9 security when such disposition is authorized by the court.

10 “(i) DEFINITION.—As used in this rule, ‘judicial officer’ means any
11 person or court authorized to bail or otherwise release a person before
12 trial or sentencing in a court of the United States, and any judge of
13 the Superior Court of the District of Columbia.

14 “RULE 46.2.—RELEASE IN OTHER CASES

15 “(a) MATERIAL WITNESS.—A judge or magistrate shall impose con-
16 ditions of release on a person under rule 46.1 if:

17 “(1) it appears by affidavit that the testimony of such person
18 is material in any criminal proceeding; and

19 “(2) it is shown that it may become impracticable to secure the
20 presence of such person by subpoena.

21 “No material witness shall be detained because of inability to comply
22 with any condition of release if the testimony of such witness can ade-
23 quately be secured by deposition, and further detention is not necessary
24 to prevent a failure of justice. Release may be delayed for a reason-
25 able period of time until the deposition of the witness can be taken.

26 “(b) AFTER CONVICTION.—A person who has been convicted of an
27 offense and is either awaiting sentence or sentence review, or has filed
28 an appeal or a petition for a writ of certiorari, shall be treated in
29 accordance with the provisions of rule 46.1, unless the court or judge
30 has reason to believe that no one or more conditions of release will
31 reasonably assure that the person will not flee or pose a danger to any
32 other person or to the community. If such a risk of flight or danger
33 is believed to exist, or if it appears that an appeal is frivolous or taken
34 for purposes of delay, the person shall be ordered detained. Such an
35 order is not appealable.

36 “(c) REMOVAL FROM STATE COURT.—Whenever the judgment of a
37 state court in any criminal proceeding is brought to the Supreme Court
38 of the United States for review, the defendant shall not be released
39 from custody until a final judgment upon such review or, if the offense

1 be bailable, until a bond, with sufficient sureties, in a reasonable sum,
2 is given.

3 “(d) CAPITAL CASE.—A person who is charged with an offense pun-
4 ishable by death shall be treated in accordance with the provisions of
5 rule 46.1, unless the court or judge has reason to believe that no one
6 or more conditions of release will reasonably assure that the person
7 will not flee or pose a danger to any other person or to the community.
8 If such a risk of flight or danger is believed to exist, or if it appears
9 that an appeal is frivolous or taken for purposes of delay, the person
10 shall be ordered detained. Such an order is not appealable, provided
11 that other rights to judicial review of conditions of release or orders
12 of detention shall not be affected. In no case, however, shall any person
13 charged with an offense punishable by death be admitted to bail or
14 otherwise released except by a court of the United States having origi-
15 nal jurisdiction in criminal cases, or a justice or judge of such court.

16 “RULE 46.3.—ENFORCEMENT

17 “(a) FORFEITURE OF SECURITY.—A person who violates a condition
18 or conditions, of release shall, in accordance with rule, incur a forfeit-
19 ure of any security which was given or pledged for his release.

20 “(b) SURRENDER.—A person charged with an offense, who is released
21 upon the execution of an appearance bail bond with one or more sure-
22 ties, may be arrested by his surety and delivered to the marshal or his
23 deputy and brought before a court or magistrate. At the request of
24 such surety, the court or magistrate shall recommit the person so ar-
25 rested to the custody of the marshal, and indorse on the recognizance
26 or certified copy of the recognizance, the discharge and exoneretur of
27 such surety. The person so committed shall be held in official detention
28 until discharged by due course of law.

29 “(c) ADDITIONAL BAIL.—When proof is made to a court or magis-
30 trate that a person previously released on the execution of an appear-
31 ance bail bond with one or more sureties on any such charge is about to
32 abscond, and that his bail is insufficient, such court or magistrate shall
33 require such person to give better security. If the person fails to give
34 such better security, the court or magistrate may cause him to be com-
35 mitted. An order for his arrest may be indorsed on the former com-
36 mitment, or a new warrant may be issued by the judge or magistrate
37 setting forth the reasons.

38 “RULE 46.4.—ORDERS RESPECTING PERSONS IN CUSTODY

39 “Persons in custody or official detention, including prisoners, shall
40 be brought into court or returned on order of the court or of the attor-

1 ney for the government, for which no fee shall be charged and no writ
2 required."

3 (r) In subdivision (c) of Rule 54, strike the following paragraphs:

4 " 'Minor offense' is defined in 18 U.S.C. 3401."; and

5 " 'Petty offense' is defined in 18 U.S.C. 1(3).".

6 (s) Strike Rule 59, Effective Date, in its entirety and redesignate
7 Rule 60, Title, as "Rule 59".

8 SEC. 202. The Table of Rules of the Federal Rules of Criminal Pro-
9 cedure is amended by inserting in proper chronological order the fol-
10 lowing new items:

"Rule

"3.1 Commencement of Prosecution.

"4.

"(d) Multiple Warrants Unnecessary.

"(e) Tax Offenses.

"5.1 Preliminary Examination; Time

"(a) General.

"(b) Date.

"(c) Later Date.

"(d) Discharge.

"(e) Indictment or Information.

"(f) Record.

"5.2 Preliminary examination; Scope

"(a) Probable cause finding.

"(b) Discharge of defendant.

"(c) Records.

"6.1 Special Grand Jury.

"(a) Summoning Special Grand Juries.

"(b) Term.

"(c) Investigation.

"(d) Submission of Report.

"(e) Examination of Report.

"(f) Sealing and Answering Report.

"(g) Prejudice.

"(h) Other Order.

"(i) Rules.

"(j) Definition.

"15. Depositions:

"(a) When Taken.

"(b) Notice of Taking.

"(c) Whose instance.

"(d) How Taken

"(e) Use.

"(f) Objections to Deposition Testimony.

"(g) Unavailability.

"(h) Deposition by Agreement Not Precluded.

"16.1 Demands for Production of Statement and Reports of Witnesses

"(a) Government Witness.

"(b) Motion.

"(c) Inspection by Court.

"(d) Deletion of Testimony or Mistrial.

"(e) Definition.

"16.2 Capital Offense.

"23.1 Trial by Magistrate

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1 SEC. 203. The enactment of this title does not impair the authority
 2 of the Supreme Court under section 3-11A1 of the Federal Criminal
 3 Code, as revised by title I of this Act, to rescind, modify or supple-
 4 ment any of the rules of criminal procedure or an amendment to them
 5 set out in this title or to promulgate additional rules of criminal
 6 procedure.

TITLE III—CONFORMING AMENDMENTS

PART A—TITLE 2, U.S.C., AMENDMENTS

THE CONGRESS

SEC. 301. (a) The Act of August 4, 1940 (2 U.S.C. 167g), is amended by striking out the colon and the following: "That in any case where, in the commission of any such offense, public property is damaged in an amount exceeding \$100, the period of imprisonment for the offense may be not more than five years".

(b) Section 102 of the Revised Statutes (2 U.S.C. 192), is repealed.

(c) Section 311(a) of the Federal Election Campaign Act of 1971 is amended to read as follows:

"SEC. 311. (a) Any person who violates any of the provisions of this title shall be guilty of a Class E felony except that the maximum fine shall be \$1,000."

(d) Section 310(a) of the Federal Regulation of Lobbying Act (2 U.S.C. 269), is amended to read as follows:

"(a) Any person who violates any of the provisions of this chapter shall, upon conviction, be guilty of a Class E felony, except that the maximum fine shall be \$5,000."

(e) Section 11 of the Federal Contested Elections Act (2 U.S.C. 390) is amended to read as follows:

"Any subpoena issued under this Act shall be considered to have been issued for an official proceeding before Congress for the purpose of section 2-6C2, title 18, United States Code."

(f) Title II of the Federal Election Campaign Act of 1971 is amended to read as follows:

"DEFINITIONS

"SEC. 201. As used in this title the term—

"(a) 'election' means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(b) 'candidate' means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an in-

dividual shall be deemed to seek nomination for election, or election, to Federal office, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

“(c) ‘Federal office’ means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

“(d) ‘political committee’ means any individual, committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$1,000;

“(e) ‘contribution’ means—

“(1) a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

“(2) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

“(3) a transfer of funds between political committees;

“(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose; and

“(5) notwithstanding the foregoing meanings of ‘contribution’, the word shall not be construed to include services provided without compensation by individuals volunteering a

portion of all of their time on behalf of a candidate or political committee;

“(f) ‘expenditure’ means—

“(1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

“(2) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure; and

“(3) a transfer of funds between political committees;

“(g) ‘person’ and ‘whoever’ mean an individual, partnership, committee, association, corporation, or any other organization or group of persons; and

“(h) ‘State’ means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

“PROMISE OF EMPLOYMENT OR OTHER BENEFIT FOR POLITICAL ACTIVITY

“SEC. 202. Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be guilty of a Class E felony.

“LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

“SEC. 203. (a) No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connec-

tion with his campaign for nomination for election, or election, to Federal office in excess of—

“(A) \$50,000, in the case of a candidate for the office of President or Vice President;

“(B) \$35,000, in the case of a candidate for the office of Senator; or

“(C) \$25,000, in the case of a candidate for the office of Representative, or Delegate or Resident Commissioner to the Congress.

“(2) For purposes of this subsection, ‘immediate family’ means a candidate’s spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.

“(b) No candidate or political committee shall knowingly accept any contribution or authorize any expenditure in violation of the provisions of this section.

“(c) Whoever violates the provisions of this section shall be guilty of a Class E felony.

“CONTRIBUTION OR EXPENDITURES

“SEC. 204. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

“Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be guilty of a Class E felony, except that—

“(1) the maximum fine shall be \$5,000; and

“(2) if the violation was willful, the maximum fine shall be \$10,000.

1 “For the purposes of this section ‘labor organization’ means any
2 organization of any kind, or any agency or employee representation
3 committee or plan, in which employees participate and which exist
4 for the purpose, in whole or in part, of dealing with employers con-
5 cerning grievances, labor disputes, wages, rates of pay, hours of em-
6 ployment, or conditions of work.

7 “As used in this section, the phrase ‘contribution or expenditure’
8 shall include any direct or indirect payment, distribution, loan, ad-
9 vance, deposit, or gift of money, or any services, or anything of value
10 (except a loan of money by a national or State bank made in accord-
11 ance with the applicable banking laws and regulations and in the ordi-
12 nary course of business) to any candidate, campaign committee, or
13 political party or organization, in connection with any election to any
14 of the offices referred to in this section; but shall not include communi-
15 cations by a corporation to its stockholders and their families or by a
16 labor organization to its members and their families on any subject;
17 nonpartisan registration and get-out-the-vote campaigns by a cor-
18 poration aimed at its stockholders and their families, or by a labor
19 organization aimed at its members and their families; the establish-
20 ment, administration, and solicitation of contributions to a separate
21 segregated fund to be utilized for political purposes by a corporation
22 or labor organization: *Provided*, That it shall be unlawful for such a
23 fund to make a contribution or expenditure by utilizing money or any-
24 thing of value secured by physical force, job discrimination, financial
25 reprisals, or the threat of force, job discrimination, or financial re-
26 prisal; or by dues, fees, or other monies required as a condition of mem-
27 bership in a labor organization or as a condition of employment, or by
28 monies obtained in any commercial transaction.

29 “CONTRIBUTIONS BY GOVERNMENT CONTRACTORS

30 “SEC. 205. Whoever—

31 “(a) entering into any contract with the United States or any
32 department or agency thereof either for the rendition of personal
33 services or furnishing any material, supplies, or equipment to the
34 United States or any department or agency thereof or for selling
35 any land or building to the United States or any department or
36 agency thereof, if payment for the performance of such contract
37 or payment for such material, supplies, equipment, land, or build-
38 ing is to be made in whole or in part from funds appropriated by
39 the Congress, at any time between the commencement of negotia-
40 tions for and the later of (1) the completion of performance
41 under, or (2) the termination of negotiations for, such contract or

furnishing of material, supplies, equipment, land or buildings, directly or indirectly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

“(b) knowingly solicits any such contribution from any such person for any such purpose during any such period; shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.”

PART B—TITLE 4, U.S.C., AMENDMENTS

SEC. 302. (a) Title 4 of the United States Code is amended by adding at the end thereof the following new chapter:

“Chapter 6.—EMBLEMS, INSIGNIA AND NAMES

“Sec.

“151. Official badges, identification cards, other insignia.

“152. False advertising or misuse of names to indicate Federal agency.

“153. Misuse of names to indicate Federal agency.

“§ 151. Official badges, identification cards, other insignia

“Whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be guilty of a misdemeanor, except that the maximum fine shall be \$250.

“§ 152. False advertising or misuse of names to indicate Federal agency

“Whoever, except as permitted by the laws of the United States, uses the words ‘national’, ‘Federal’, ‘United States’, ‘reserve’, or ‘Deposit Insurance’ as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity engaged in the banking, loan, building and loan, brokerage, factorage, insurance, indemnity, savings or trust business; or

“Whoever falsely advertises or represents, or publishes or displays any sign, symbol or advertisement reasonably calculated to convey the impression that a nonmember bank, banking association, firm, or partnership is a member of the Federal reserve system; or

1 “Whoever, except as expressly authorized by Federal law, uses the
2 words ‘Federal Deposit’, ‘Federal Deposit Insurance’, or ‘Federal De-
3 posit Insurance Corporation’ or a combination of any three of these
4 words, as the name or a part thereof under which he or it does business,
5 or advertises or otherwise represents falsely by any device whatsoever
6 that his or its deposit liabilities, obligations, certificates, or shares are
7 insured or guaranteed by the Federal Deposit Insurance Corporation,
8 or by the United States or by any instrumentality thereof, or who-
9 ever advertises that his or its deposits, shares, or accounts are federally
10 insured, or falsely advertises or otherwise represents by any device
11 whatsoever the extent to which or the manner in which the deposit
12 liabilities of an insured bank or banks are insured by the Federal
13 Deposit Insurance Corporation; or

14 “Whoever falsely advertises or otherwise represents by any device
15 whatsoever that his or its deposit liabilities, obligations, certificates, or
16 shares are insured under the Federal Credit Union Act or by the
17 United States or any instrumentality thereof, or, being an insured
18 credit union as defined in that Act falsely advertises or otherwise rep-
19 represents by any device whatsoever the extent to which or the manner
20 in which shareholdings in such credit union are insured under such
21 Act; or

22 “Whoever, not being organized under chapter 7 of Title 12, adver-
23 tises or represents that it makes Federal Farm loans or advertises or
24 offers for sale as Federal Farm loan bonds any bond not issued under
25 chapter 7 of Title 12, or uses the word ‘Federal’ or the words ‘United
26 States’ or any other words implying Government ownership, obliga-
27 tion or supervision in advertising or offering for sale any bond, note,
28 mortgage or other security not issued by the Government of the
29 United States under the provisions of said chapter 7 or some other
30 Act of Congress; or

31 “Whoever uses the words ‘Federal Home Loan Bank’ or any com-
32 bination or variation of these words alone or with other words as a
33 business name or part of a business name, or falsely publishes, adver-
34 tises or represents by any device or symbol or other means reasonably
35 calculated to convey the impression that he or it is a Federal Home
36 Loan Bank or member of or subscriber for the stock of a Federal
37 Home Loan Bank; or

38 “Whoever uses the words ‘National Agricultural Credit Corpora-
39 tion’ as part of the business or firm name of a person, corporation,
40 partnership, business trust, association or other business entity not

1 organized under the laws of the United States as a National Agri-
2 cultural Credit Corporation; or

3 "Whoever uses the words 'Federal intermediate credit bank' as part
4 of the business or firm name for any person, corporation, partnership,
5 business trust, association or other business entity not organized as an
6 intermediate credit bank under the laws of the United States; or

7 "Whoever uses as a firm or business name the words 'Department of
8 Housing and Urban Development', 'Housing and Home Finance
9 Agency', 'Federal Housing Administration', 'Government National
10 Mortgage Association', 'United States Housing Authority', or 'Public
11 Housing Administration' or the letters 'HUD', 'FHA', 'PHA', or
12 'USHA', or any combination or variation of those words or the letters
13 'HUD', 'FHA', 'PHA', or 'USHA' alone or with other words or letters
14 reasonably calculated to convey the false impression that such name or
15 business has some connection with, or authorization from, the Depart-
16 ment of Housing and Urban Development, the Housing and Home Fi-
17 nance Agency, the Federal Housing Administration, the Government
18 National Mortgage Association, the United States Housing Authority,
19 the Public Housing Administration, the Government of the United
20 States, or any agency thereof, which does not in fact exist, or falsely
21 claims that any repair, improvement, or alteration of any existing
22 structure is required or recommended by the Department of Housing
23 and Urban Development, the Housing and Home Finance Agency, the
24 Federal Housing Administration, the Government National Mortgage
25 Association, the United States Housing Authority, the Public Housing
26 Administration, the Government of the United States, or any agency
27 thereof, for the purpose of inducing any person to enter into a contract
28 for the making of such repairs, alterations, or improvements, or falsely
29 advertises or falsely represents by any device whatsoever that any
30 housing unit, project, business, or product has been in any way en-
31 dorsed, authorized, inspected, appraised, or approved by the Depart-
32 ment of Housing and Urban Development, the Housing and Home Fi-
33 nance Agency, the Federal Housing Administration, the Government
34 National Mortgage Association, the United States Housing Authority,
35 the Public Housing Administration, the Government of the United
36 States, or any agency thereof; or

37 "Whoever, except with the written permission of the Director of the
38 Federal Bureau of Investigation, knowingly uses the words 'Federal
39 Bureau of Investigation' or the initials 'F.B.I.', or any colorable imita-
40 tion of such words or initials, in connection with any advertisement,

1 circular, book, pamphlet or other publication, play, motion picture,
2 broadcast, telecast, or other production, in a manner reasonably cal-
3 culated to convey the impression that such advertisement, circular,
4 book, pamphlet or other publication, play, motion picture, broadcast,
5 telecast, or other production, is approved, endorsed, or authorized by
6 the Federal Bureau of Investigation; or

7 “Whoever uses as a firm or business name the words ‘Reconstruction
8 Finance Corporation’ or any combination or variation of these words—

9 “Shall be guilty of a Class E felony, except that the maximum fine
10 shall be \$1,000.

11 “This section shall not make unlawful the use of any name or title
12 which was lawful on the date of enactment of this title.

13 “This section shall not make unlawful the use of the word ‘national’
14 as part of the name of any business or firm engaged in the insurance
15 or indemnity business, whether such firm was engaged in the insurance
16 or indemnity business prior or subsequent to the date of enactment of
17 this paragraph.

18 “A violation of this section may be enjoined at the suit of the United
19 States Attorney, upon complaint by any duly authorized representa-
20 tive of any department or agency of the United States.

21 **“§ 153. Misuse of names to indicate Federal agency**

22 “Whoever, in the collection of private debts or obligations, or being
23 engaged in furnishing private police, investigation, or other private
24 detective services, uses as part of a name, or employs in any com-
25 munication, correspondence, notice, advertisement, or circular the
26 words ‘national’, ‘Federal’, or ‘United States’, the initials ‘U.S.’, or
27 any emblem, insignia, or name, for the purpose of conveying and in
28 a manner reasonably calculated to convey the false impression that
29 such person is a department, agency, bureau, or instrumentality of
30 the United States or in any manner represents the United States, shall
31 be guilty of a Class E felony.”

32 (b) Chapter 2 of title 4, United States Code, is amended by adding
33 at the end thereof the following new section:

34 **“§ 43. Use of likenesses of the great seal of the United States, and
35 of the seals of the President and Vice President**

36 “(a) Whoever knowingly displays any printed or other likeness of
37 the great seal of the United States, or of the seals of the President or
38 the Vice President of the United States, or any facsimile thereof, in,
39 or in connection with, any advertisement, poster, circular, book,
40 pamphlet or other publication, public meeting, play, motion picture,

1 telecast, or other production, or on any building, monument, or sta-
 2 tionery, for the purpose of conveying, or in a manner reasonably cal-
 3 culated to convey, a false impression of sponsorship or approval by
 4 the Government of the United States or by any department, agency,
 5 or instrumentality thereof, shall be guilty of a misdemeanor, except
 6 that the maximum fine shall be \$250.

7 “(b) Whoever, except as authorized under regulations promul-
 8 gated by the President and published in the Federal Register, know-
 9 ingly manufactures, reproduces, sells, or purchases for resale, either
 10 separately or appended to any article manufactured or sold, any like-
 11 ness of the seals of the President or Vice President, or any substantial
 12 part thereof, except for manufacture or sale of the article for the
 13 official use of the Government of the United States, shall be guilty of a
 14 misdemeanor, except that the maximum fine shall be \$250.

15 “(c) A violation of subsection (a) or (b) of this section may be en-
 16 joined at the suit of the Attorney General upon complaint by any
 17 authorized representative of any department or agency of the United
 18 States.”

19 (c) (1) The analysis to title 4, United States Code, is amended by
 20 adding at the end thereof the following new item :

21 “6. Emblems, Insignia and Names----- 151”

22 (2) The analysis to chapter 2 of title 4, United States Code, is
 23 amended by adding at the end thereof the following new item :

24 “§ 43. Use of likenesses of the great seal of the United States, and of the seals of
 the President and Vice President.”

25 PART C—TITLE 5, U.S.C., AMENDMENTS

26 SEC. 303. (a) Section 551(10) (C) of title 5, United States Code, is
 27 amended by deleting “or fine”.

28 (b) Subsection (d) of section 555 of title 5, United States Code, is
 29 amended by adding at the end thereof the following new sentence:
 30 “The provisions of section 2-6C2 of title 18, United States Code, shall
 31 be applicable with respect to any such subpoena so issued.”

32 (c) Subsection (a) of section 1507 of title 5, United States Code, is
 33 amended by adding at the end thereof the following new sentence:
 34 “The provisions of section 2-6C2 of title 18, United States Code, shall
 35 be applicable with respect to any subpoena issued pursuant to this
 36 section.”

37 (d) Subsection (a) of section 7313 of title 5, United States Code, is
 38 amended by deleting “ineligible to accept or hold any position in the
 39 Government of the United States or in the government of the District
 40 of Columbia for the five years immediately following the date upon

1 which his conviction becomes final. Any such individual holding a posi-
2 tion in the Government of the United States or the Government of the
3 District of Columbia on the date his conviction becomes final shall be
4 removed from such position” and inserting in lieu thereof the follow-
5 ing: “subject to the provisions of section 1-4A3 of title 18, United
6 States Code. For purposes of this section, the term ‘Federal position’
7 as used in section 1-4A3 shall be deemed to include a position in the
8 government of the District of Columbia”.

9 (e) Section 8125 of title 5, United States Code, is hereby repealed.

10 (f) Paragraph (1) of subsection (b) of section 8312 of title 5,
11 United States Code, is amended to read as follows:

12 “(1) An offense within the purview of—

13 “(A) section 2-5B10 (aiding national security offenders
14 or deserters), 2-5B7 (espionage), 2-5B8 (misuse of classified
15 information) of title 18, United States Code;

16 “(B) section 2-5B4 (sabotage), 2-6B1 (physical obstruc-
17 tion of government function), 2-8B5 or 2-8B6 (aggravated
18 malicious mischief or malicious mischief if the offense
19 involves national security), 2-8C4 or 2-8C5 (aggravated
20 criminal trespass or criminal trespass if the offense involves
21 national security), or 1-2A5 (criminal conspiracy if such con-
22 spiracy involves any of such sections referred to in this sub-
23 paragraph) of title 18, United States Code;

24 “(C) section 2-5B1 (treason), 2-5B2 (military activity
25 against the United States), 2-5B10 (aiding national security
26 offenders or deserters), 2-5B3 (armed insurrection), 2-5B6
27 (obstructing military service), 2-6D2 (false statements if
28 such statements impair military effectiveness), 2-6B3 (hinder-
29 ing law enforcement if the offense with respect to which such
30 individual was convicted involved the harboring or conceal-
31 ment of a person whom such individual so convicted knew or
32 had reasonable grounds to believe or suspect, had committed
33 an offense under section 1-2A5, 2-5B6, 2-6D2(a) (6) of title
34 18, United States Code), 1-2A5 (criminal conspiracy if such
35 conspiracy involved section 2-5B6, 2-6D2(a) (6) or 2-6B3 of
36 title 18, United States Code), or 2-5C2 (foreign armed forces)
37 of title 18, United States Code;”.

38 (g) Paragraph (1) of subsection (c) of section 8312 of title 5,
39 United States Code, is amended to read as follows:

40 “(1) An offense within the purview of—

1 “(A) section 2272 (violation of specific sections) or 2273
2 (violation of sections generally of chapter 23 of title 42,
3 United States Code) of title 42, United States Code, insofar
4 as the offense is committed with intent to injure the United
5 States or with intent to secure an advantage to a foreign
6 nation.

7 “(B) section 2-5B3, 2-9D1, 2-5B4, 2-5B7, 2-5B8, 2-5B12,
8 or 2-6B1 of title 18, United States Code; or

9 “(C) section 783 (conspiracy and communication and
10 receipt of classified information) of title 50, United States
11 Code.

12 (h) The amendments made by subsections (f) and (g) of this sec-
13 tion shall not be applicable, for the purposes of subsections (b) and
14 (c) of section 8312 of title 5, United States Code, with respect to any
15 convicted individual referred to in such subsections (b) or (c) of
16 section 8312 if the conviction of that individual occurred prior to the
17 effective date of this subsection. The provisions of such subsections (b)
18 and (c) as they existed on the date immediately preceding the effective
19 date of this subsection shall continue to apply to such individual in
20 the same manner and to the same extent as if the amendments made
21 by this section were never enacted.

22 SEC. 304. Title 5 of the United States Code is amended by adding at
23 the end thereof the following new Part:

24 **“PART IV—MISCELLANEOUS**

“CHAPTER	Sec.
“91. CONFLICT OF INTEREST.....	9101

25 **“Chapter 91.—CONFLICT OF INTEREST**

“Sec.

“9101. Definitions.

“9102. Compensation to Members of Congress, officers and others in matters af-
fecting the Government.

“9103. Practice in Court of Claims by Members of Congress.

“9104. Activities of officers and employees in claims against and other matters
affecting the Government.

“9105. Exemption of retired officers of the uniformed services.

“9106. Disqualification of former officers and employees in matters connected
with former duties or official responsibilities; disqualification of
partners.

“9107. Acts affecting a personal financial interest.

“9108. Salary of Government officials and employees payable only by the United
States.

“9109. Acceptance or solicitations in connection with appointive public office.

“9110. Voiding transactions in violation of chapter; recovery by the United
States.

“9111. Officers and employees acting as agents of foreign principals.

“9112. Solicitation of employment and receipt of unapproved fees concerning
Federal employees' compensation.

“9113. Contracts by Members of Congress.

“9114. Officers or employees contracting with Members of Congress.

“9115. Exemption with respect to certain contracts.

1 **“§ 9101. Definitions**

2 “For the purposes of sections 9102, 9104, 9106, 9107, and 9108 of
3 this chapter, the term ‘special Government employee’ means an officer
4 or employee of the executive or legislative branch of the United States
5 Government, of any independent agency of the United States or of the
6 District of Columbia, who is retained, designated, appointed, or em-
7 ployed to perform, with or without compensation, for not to exceed
8 one hundred and thirty days during any period of three hundred and
9 sixty-five consecutive days, temporary duties either on a full-time or
10 intermittent basis, or a part-time United States magistrate. Notwith-
11 standing the next preceding sentence, every person serving as a part-
12 time local representative of a Member of Congress in the Member’s
13 home district or State shall be classified as a special Government em-
14 ployee. Notwithstanding section 502, 5534, and 2105 (d) of this title,
15 a Reserve officer of the Armed Forces, or an officer of the National
16 Guard of the United States, unless otherwise an officer or employee
17 of the United States, shall be classified as a special Government em-
18 ployee while on active duty solely for training. A Reserve officer of the
19 Armed Forces or an officer of the National Guard of the United States
20 who is voluntarily serving a period of extended active duty in excess
21 of one hundred and thirty days shall be classified as an officer of the
22 United States within the meaning of section 9102 and sections 9104
23 through 9108, and 9110. A Reserve officer of the Armed Forces or an
24 officer of the National Guard of the United States who is serving in-
25 voluntarily shall be classified as a special Government employee. The
26 term ‘officer or employee’ and ‘special Government employee’ as used
27 in sections 9102, 9104, 9106 through 9108, and 9110, shall not include
28 enlisted members of the Armed Forces.

29 “(b) For purposes of sections 9104 and 9106 of this chapter the
30 term ‘official responsibility’ means the direct administrative or op-
31 erating authority, whether intermediate or final, and either exercis-
32 able alone or with others, and either personally or through subordi-
33 nates, to approve, disapprove, or otherwise direct Government action.

34 **“§ 9102. Compensation to Members of Congress, officers, and**
35 **others in matters affecting the Government**

36 “(a) Whoever, otherwise than as provided by law for the proper
37 discharge of official duties, directly or indirectly receives or agrees
38 to receive, or asks, demands, solicits, or seeks, any compensation for
39 any services rendered or to be rendered either by himself or another—

40 “(1) at a time when he is a Member of Congress, Member of

1 Congress Elect, Delegate from the District of Columbia, Resi-
2 dent Commissioner, or Resident Commissioner Elect; or

3 “(2) at a time when he is an officer or employee of the United
4 States in the executive, legislative, or judicial branch of the
5 Government, or in any agency of the United States, including
6 the District of Columbia,

7 in relation to any proceeding, application, request for a ruling or
8 other determination, contract, claim, controversy, charge, accusation,
9 arrest, or other particular matter in which the United States is a
10 party or has a direct and substantial interest, before any department,
11 agency, court-martial, officer, or any civil, military, or naval com-
12 mission, or

13 “(b) Whoever, knowingly, otherwise than as provided by law for
14 the proper discharge of official duties, directly or indirectly gives,
15 promises, or offers any compensation for any such services rendered
16 or to be rendered at a time when the person to whom the compensa-
17 tion is given, promised, or offered, is or was such a Member, Dele-
18 gate, Commissioner, officer or employee—

19 “Shall be guilty of a Class D felony, except that the maximum
20 fine shall be \$10,000. In addition, any person violating this sec-
21 tion shall be subject to the provisions of section 1-4A3 of title 18,
22 United States Code. For purposes of this section, the term ‘Federal
23 position’ as used in section 1-4A3 of such title shall be deemed to
24 include a position in the Government of the District of Columbia.

25 “(c) A special Government employee shall be subject to subsec-
26 tion (a) only in relation to a particular matter involving a specific
27 party or parties: (1) in which he has at any time participated per-
28 sonally and substantially as a Government employee or as a special
29 Government employee through decision, approval, disapproval, rec-
30 commendation, the rendering of advice, investigation or otherwise; or
31 (2) which is pending in the department or agency of the Government
32 in which he is serving; except that clause (2) shall not apply in the
33 case of a special Government employee who has served in such de-
34 partment or agency no more than sixty days during the immediately
35 preceding period of three hundred and sixty-five consecutive days.

36 **“§ 9103. Practice in Court of Claims by Members of Congress**

37 “Whoever, being a Member of Congress, Member of Congress Elect,
38 Delegate from the District of Columbia, Delegate Elect from the
39 District of Columbia, Resident Commissioner, or Resident Commis-
40 sioner Elect, practices in the Court of Claims, shall be guilty of
41 a Class D felony, except that the maximum fine shall be \$10,000.

1 In addition, any person violating this section shall be subject to the
2 provisions of section 1-4A3 of title 18, United States Code.

3 **“§ 9104. Activities of officers and employees in claims against and**
4 **other matters affecting the Government**

5 “Whoever, being an officer or employee of the United States in the
6 executive, legislative, or judicial branch of the Government or in any
7 agency of the United States, including the District of Columbia,
8 otherwise than in the proper discharge of his official duties—

9 “(1) acts as agent or attorney for prosecuting any claim against
10 the United States, or receives any gratuity, or any share of or
11 interest in any such claim in consideration of assistance in the
12 prosecution of such claim, or

13 “(2) acts as agent or attorney for anyone before any depart-
14 ment, agency, court, court-martial, officer, or any civil, military,
15 or naval commission in connection with any proceeding, applica-
16 tion, request for a ruling or other determination, contract, claim,
17 controversy, charge, accusation, arrest, or other particular matter
18 in which the United States is a party or has a direct and sub-
19 stantial interest—

20 “Shall be guilty of a Class D felony, except that the maximum
21 fine shall be \$10,000.

22 “A special Government employee shall be subject to the preceding
23 paragraphs only in relation to a particular matter involving a specific
24 party or parties (1) in which he has at any time participated personally
25 and substantially as a Government employee or as a special Govern-
26 ment employee through decision, approval, disapproval, recommenda-
27 tion, the rendering of advice, investigation or otherwise, or (2)
28 which is pending in the department or agency of the Government in
29 which he is serving: *Provided*, That clause (2) shall not apply in
30 the case of a special Government employee who has served in such
31 department or agency no more than sixty days during the immediately
32 preceding period of three hundred and sixty-five consecutive days.

33 “Nothing herein prevents an officer or employee, if not inconsistent
34 with the faithful performance of his duties, from acting without
35 compensation as agent or attorney for any person who is the subject
36 of disciplinary, loyalty, or other personnel administration proceedings
37 in connection with those proceedings.

38 “Nothing herein or in section 9102 prevents an officer or employee,
39 including a special Government employee, from acting, with or without
40 compensation, as agent or attorney for his parents, spouse, child, or
41 any person for whom, or for any estate for which, he is serving as

guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

“Nothing herein or in section 9102 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefits of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

“Such certification shall be published in the Federal Register.

“Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

“§ 9105. Exemption of retired officers of the uniformed services

“Sections 9102 and 9104 of this chapter shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

“§ 9106. Disqualification of former officer and employees in matters connected with former duties or official responsibilities; disqualification of partners

“(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

“(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for any-

1 one other than the United States in connection with any proceeding,
2 application, request for a ruling or other determination, contract,
3 claim, controversy, charge, accusation, arrest, or other particular mat-
4 ter involving a specific party or parties in which the United States is
5 a party or directly and substantially interested, and which was under
6 his official responsibility as an officer or employee of the Government
7 at any time within a period of one year prior to the termination of
8 such responsibility—

9 “Shall be guilty of a Class D felony, except that the maxi-
10 mum fine shall be \$10,000: *Provided*, That nothing in subsection (a)
11 or (b) prevents a former officer or employee, including a former
12 special Government employee, with outstanding scientific or tech-
13 nological qualifications from acting as attorney or agent or appear-
14 ing personally in connection with a particular matter in a scientific
15 or technological field if the head of the department or agency con-
16 cerned with the matter shall make a certification in writing, published
17 in the Federal Register, that the national interest would be served
18 by such action or appearance by the former officer or employee.

19 “(c) Whoever, being a partner of an officer or employee of the ex-
20 ecutive branch of the United States Government, of any independent
21 agency of the United States, or of the District of Columbia, including
22 a special Government employee, acts as agent or attorney for anyone
23 other than the United States, in connection with any judicial or other
24 proceeding, application, request for a ruling or other determination,
25 contract, claim, controversy, charge, accusation, arrest, or other par-
26 ticular matter in which the United States is a party or has a direct
27 and substantial interest and in which such officer or employee of the
28 Government or special Government employee participates or has
29 participated personally and substantially as a Government employee
30 through decision, approval, disapproval, recommendation, the render-
31 ing of advice, investigation or otherwise, or which is the subject of
32 his official responsibility—

33 “Shall be guilty of a Class E felony, except that the maximum fine
34 shall be \$5,000.

35 “A partner of a present or former officer or employee of the execu-
36 tive branch of the United States Government, of any independent
37 agency of the United States, or of the District of Columbia or of a
38 present or former special Government employee shall as such be sub-
39 ject to the provisions of sections 9102, 9104, and 9106 of this chapter
40 only as expressly provided in subsection (c) of this section.

1 **“§ 9107. Acts affecting a personal financial interest**

2 “(a) Except as permitted by subsection (b) hereof, whoever, being
3 an officer or employee of the executive branch of the United States
4 Government, of any independent agency of the United States, or of
5 the District of Columbia, including a special Government employee,
6 participates personally and substantially as a Government officer or
7 employee, through decision, approval, disapproval, recommendation,
8 the rendering of advice, investigation, or otherwise, in a judicial or
9 other proceeding, application, request for a ruling or other determina-
10 tion, contract, claim, controversy, charge, accusation, arrest, or other
11 particular matter in which, to his knowledge, he, his spouse, minor
12 child, partner, organization in which he is serving as officer, director,
13 trustee, partner or employee, or any person or organization with whom
14 he is negotiating or has any arrangement concerning prospective em-
15 ployment, has a financial interest—

16 “Shall be guilty of a Class D felony, except that the maximum fine
17 shall be \$10,000.

18 “(b) Subsection (a) hereof shall not apply (1) if the officer or
19 employee first advises the Government official responsible for appoint-
20 ment to his position of the nature and circumstances of the judicial
21 or other proceeding, application, request for a ruling or other deter-
22 mination, contract, claim, controversy, charge, accusation, arrest, or
23 other particular matter and makes full disclosure of the financial
24 interest and receives in advance a written determination made by such
25 official that the interest is not so substantial as to be deemed likely
26 to affect the integrity of the services which the Government may
27 expect from such officer or employee, or (2) if, by general rule or
28 regulation published in the Federal Register, the financial interest
29 has been exempted from the requirements of clause (1) hereof as
30 being too remote or too inconsequential to affect the integrity of Gov-
31 ernment officers’ or employees’ services.

32 **“§ 9108. Salary of Government officials and employees payable**
33 **only by United States**

34 “(a) Whoever receives any salary, or any contribution to or supple-
35 mentation of salary, as compensation for his services as an officer or
36 employee of the executive branch of the United States Government, of
37 any independent agency of the United States, or of the District of
38 Columbia, from any source other than the Government of the United
39 States, except as may be contributed out of the treasury of any State,
40 county, or municipality; or

1 “Whoever, whether an individual, partnership, association, corpo-
2 ration, or other organization pays, or makes any contribution to, or in
3 any way supplements the salary of, any such officer or employee under
4 circumstances which would make its receipt a violation of this sub-
5 section—

6 “Shall be guilty of a Class E felony, except that the maximum fine
7 shall be \$5,000.

8 “(b) Nothing herein prevents an officer or employee of the executive
9 branch of the United States Government, or of any independent
10 agency of the United States, or of the District of Columbia, from
11 continuing to participate in a bona fide pension, retirement, group life,
12 health or accident insurance, profit-sharing, stock bonus, or other
13 employee welfare or benefit plan maintained by a former employer.

14 “(c) This section does not apply to a special Government employee
15 or to an officer or employee of the Government serving without com-
16 pensation, whether or not he is a special Government employee, or to
17 any person paying, contributing to, or supplementing his salary as
18 such.

19 “(d) This section does not prohibit payment or acceptance of con-
20 tributions, awards, or other expenses under the terms of the Gov-
21 ernment Employees Training Act (Public Law 85-507, 72 Stat. 327;
22 5 U.S.C. 2301-2319, July 7, 1958).

23 **“§ 9109. Acceptance or solicitation in connection with appointive**
24 **public office**

25 “Whoever solicits or receives any thing of value in consideration
26 of aiding a person to obtain employment under the United States
27 either by referring his name to an executive department or agency
28 of the United States or by requiring the payment of a fee because
29 such person has secured such employment shall be guilty of a Class E
30 felony, except that the maximum fine shall be \$1,000. This section shall
31 not apply to such services rendered by an employment agency pursuant
32 to the written request of an executive department or agency of the
33 United States.

34 **“§ 9110. Voiding transactions in violation of chapter ; recovery by**
35 **the United States**

36 “In addition to any other remedies provided by law the President
37 or, under regulations prescribed by him, the head of any department
38 or agency involved, may declare void and rescind any contract, loan,
39 grant, subsidy, license, right, permit, franchise, use, authority, priv-
40 ilege, benefit, certificate, ruling, decision, opinion, or rate schedule
41 awarded, granted, paid, furnished, or published, or the performance

1 of any service or transfer or delivery of anything to, by or for any
2 agency of the United States or officer or employee of the United States
3 or person acting on behalf thereof, in relation to which there has been
4 a final conviction for any violation of this chapter, and the United
5 States shall be entitled to recover in addition to any penalty prescribed
6 by law or in a contract the amount expended or the thing transferred
7 or delivered on its behalf, or the reasonable value thereof.

8 **“§ 9111. Officers and employees acting as agents of foreign**
9 **principals**

10 “Whoever, being an officer or employee of the United States in the
11 executive, legislative, or judicial branch of the Government or in any
12 agency of the United States, including the District of Columbia, is
13 or acts as an agent of a foreign principal required to register under
14 the Foreign Agents Registration Act of 1938, as amended, shall be
15 guilty of a Class D felony, except that the maximum fine shall be
16 \$10,000.

17 “Nothing in this section shall apply to the employment of any
18 agent of a foreign principal as a special Government employee in any
19 case in which the head of the employing agency certifies that such
20 employment is required in the national interest. A copy of any cer-
21 tification under this paragraph shall be forwarded by the head of
22 such agency to the Attorney General who shall cause the same to be
23 filed with the registration statement and other documents filed by such
24 agent, and made available for public inspection in accordance with
25 section 6 of the Foreign Agents Registration Act of 1938, as amended.

26 **“§ 9112. Solicitation of employment and receipt of unapproved**
27 **fees concerning Federal employees’ compensation**

28 “Whoever solicits employment for himself or another in respect to
29 a case, claim, or award for compensation under, or to be brought under,
30 subchapter I of chapter 81 of title 5, United States Code; or

31 “Whoever receives a fee, other consideration, or gratuity on ac-
32 count of legal or other services furnished in respect to a case, claim,
33 award for compensation under subchapter I of chapter 81 of title 5,
34 United States Code, unless the fee, consideration, or gratuity is ap-
35 proved by the Secretary of Labor—

36 “Shall for each offense, be guilty of a Class E felony.

37 **“§ 9113. Contracts by Members of Congress**

38 “Whoever, being a Member of or Delegate to Congress, or a Resident
39 Commissioner, either before or after he has qualified, directly or in-
40 directly, himself, or by any other person in trust for him, or for his

1 use or benefit, or on his account, undertakes, executes, holds, or enjoys,
2 in whole or in part, any contract or agreement, made or entered into in
3 behalf of the United States or any agency thereof by any officer or per-
4 son authorized to make contracts on its behalf, shall be guilty of a
5 violation, except that the maximum fine shall be \$3,000.

6 "All contracts or agreements made in violation of this section shall
7 be void; and whenever any sum of money is advanced by the United
8 States or any agency thereof, in consideration of any such contract or
9 agreement, it shall forthwith be repaid; and in case of failure or refusal
10 to repay the same when demanded by the proper officer of the depart-
11 ment or agency under whose authority such contract or agreement
12 shall have been made or entered into, suit shall at once be brought
13 against the person so failing or refusing and his sureties for the re-
14 covery of the money so advanced.

15 **"§ 9114. Officers or employees contracting with Member of**
16 **Congress**

17 "Whoever, being an officer or employee of the United States, on
18 behalf of the United States or any agency thereof, directly or indirectly
19 makes or enters into any contract, bargain, or agreement, with any
20 Member of or Delegate to Congress, or any Resident Commissioner,
21 either before or after he has qualified, shall be guilty of a violation,
22 except that the maximum fine shall be \$3,000.

23 **"§ 9115. Exemption with respect to certain contracts**

24 "Sections 9113 and 9114 of this chapter shall not extend to any con-
25 tract or agreement made or entered into, or accepted by any incor-
26 porated company for the general benefit of such corporation; nor to
27 the purchase or sale of bills of exchange or other property where the
28 same are ready for delivery and payment therefor is made at the time
29 of making or entering into the contract or agreement. Nor shall the
30 provisions of such sections apply to advances, loans, discounts, pur-
31 chase or repurchase agreements, extensions, or renewals thereof, or
32 acceptances, releases or substitution of security therefor or other con-
33 tracts or agreements made or entered into under the Reconstruction Fi-
34 nance Corporation Act, the Agricultural Adjustment Act, the Federal
35 Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm
36 Credit Act of 1933, or the Home Owners Loan Act of 1933, the Farm-
37 ers' Home Administration Act of 1946, the Bankhead-Jones Farm Ten-
38 ant Act, or to crop insurance agreements or contracts or agreements of
39 a kind which the Secretary of Agriculture may enter into with farmers.

40 "Any exemption permitted by this section shall be made a matter of
41 public record."

1 PART D—TITLE 7, U.S.C., AMENDMENTS

2 SEC. 305. (a) Section 9 of the Commodity Exchange Act (42
3 Stat. 1003), is amended to read as follows:

4 “SEC. 13. (a) It shall be a Class D felony, except that the maximum
5 fine shall be \$10,000, for any person to manipulate the price of any
6 commodity in interstate commerce or for future delivery on or sub-
7 ject to the rules of any contract market, or to corner any such
8 commodity, or knowingly to deliver or cause to be delivered for trans-
9 mission through the mails or in interstate commerce by telegraph, tele-
10 phone, wireless or other means of communication false or misleading
11 or knowingly incorrect reports concerning crop or market information
12 or conditions that affect or tend to affect the price of any commodity in
13 interstate commerce.

14 “(b) Except as provided in subsection (a) of this section it shall be
15 a Class E felony, except that the maximum fine shall be \$10,000 for
16 any person to violate the provisions of this Act or to fail to evi-
17 dence any contract mentioned in section 6 of this title in writing as
18 therein required.”

19 (b) Subsection (b) of section 1 of the Act of August 28, 1958 (72
20 Stat. 1013), is amended to read as follows:

21 “(b) Any person who shall violate the provisions of this section
22 shall be guilty of a misdemeanor, except that the maximum fine shall
23 be \$5,000.”

24 (c) Section 6b of the Commodity Exchange Act (82 Stat. 31), is
25 amended by striking out the words “misdemeanor and, upon convic-
26 tion thereof, shall be fined not less than \$500 nor more than \$10,000 or
27 imprisoned for not less than six months nor more than one year, or
28 both” and inserting in lieu thereof “Class E felony, except that the
29 maximum fine shall be \$5,000,”.

30 (d) Section 6(c) of the Commodity Exchange Act (82 Stat. 31), is
31 amended by striking out the words “misdemeanor and, upon convic-
32 tion thereof, shall be fined not less than \$500 nor more than \$10,000 or
33 imprisoned for not less than 6 months nor more than 1 year or both,
34 except that if such failure or refusal to obey or comply with such order
35 involves any offense within paragraph (a) or (b) of section 13 of this
36 title, such person shall be guilty of a felony and upon conviction there-
37 of shall be subject to the penalties of said paragraph (a) or (b)” and
38 inserting in lieu thereof “Class E felony, except that the maximum
39 fine shall be \$10,000”.

(e) (1) Section 87b of the United States Grain Standards Act (82 Stat. 766), is amended by striking out paragraphs (1) and (2) and redesignating paragraph (3) as paragraph (1) and amending such paragraph to read as follows:

“(1) knowingly cause the issuance of a false or incorrect official certificate or other official form by any means including but not limited to deceptive loading, handling, or sampling of grain or submitting grain for official inspection knowing it has been deceptively loaded, handled, or sampled without disclosing such knowledge to the official inspection personnel before each official sampling.”

(2) Paragraphs (4), (5), and (6) of such section are redesignated as paragraphs (2), (3), and (4).

(3) Paragraphs (7), (9), and (10) of such section are repealed and paragraphs (8) and (11) are redesignated as paragraphs (5) and (6).

(4) Subsection (b) (4) of such section is repealed.

(5) Subsection (c) of such section is amended to read as follows: “An offense shall be deemed to have been committed recklessly under this section if it resulted from gross negligence or was committed with knowledge of the pertinent facts.”

(f) Subsection (a) of section 87c of the United States Grain Standards Act (82 Stat. 767), is amended to read as follows:

“(a) Any person who commits an offense prohibited by section 87b of this title shall be guilty of a misdemeanor, except that the maximum fine shall be \$3,000. If such offense is committed after one conviction of such person has become final, such person shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.”

(g) Section 87f of the United States Grain Standards Act (82 Stat. 768), is amended by striking subsections (e) and (g) and redesignating subsection (h) as subsection (e).

(h) (1) Section 17(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 et seq.), is amended to read as follows:

“(a) It shall be an affirmative defense to a violation of this Act in the case of any pesticide or device which is intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser, except that the producers of such pesticides and devices shall be subject to section 8 of this Act.”

(2) Section 12(a) (2) (C) of such Act is amended to read as follows:

“(C) to give a guaranty or undertaking provided in subsection

(b) which is false in any particular, except that it shall be an

1 affirmative defense to any such violation if the person so charged
2 with that violation, in giving such guaranty or undertaking, re-
3 ceived and relied upon a guaranty authorized under subsection
4 (b), if the guaranty or undertaking which he gave was to the
5 same effect as that upon which he received and relied upon, and if
6 the guaranty or undertaking given by such person charged with
7 such violation contained, in addition to his own name and ad-
8 dress, the name and address of the person residing in the United
9 States from whom he received the guaranty or undertaking on
10 which he relied;”

11 (3) Section 12(b) of such Act is amended by deleting “(b) EXEMP-
12 TIONS.—The penalties provided for a violation of paragraph (1) of
13 subsection (a) shall not apply to—” and inserting in lieu thereof the
14 following:

15 “(b) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense
16 to a violation of paragraph (1) of subsection (a) in the case of—”.

17 (4) Section 14(b) of such Act is amended to read as follows:

18 “(b) CRIMINAL PENALTIES.—

19 “(1) IN GENERAL.—Any registrant, commercial applicator,
20 wholesaler, dealer, retailer, or other distributor who knowingly
21 violates any provision of this Act shall be guilty of a Class E
22 felony, except that the maximum fine shall be \$25,000.

23 “(2) PRIVATE APPLICATOR.—Any private applicator or other
24 person not included in paragraph (1) who knowingly violates any
25 provision of this Act shall be guilty of a violation, except that the
26 maximum fine shall be \$1,000.

27 “(3) DISCLOSURE OF INFORMATION.—Any person who, with in-
28 tent to defraud, uses or reveals information relative to formulas
29 of products acquired under the authority of section 3, shall be
30 guilty of a Class D felony, except that the maximum fine shall be
31 \$10,000.

32 “(4) ACTS OF OFFICERS, AGENTS, ETC.—When construing and
33 enforcing the provisions of this Act, the act, omission, or failure
34 of any officer, agent, or other person acting for or employed by
35 any person shall in every case be also deemed to be the act, omis-
36 sion, or failure of such person as well as that of the person em-
37 ployed.”

38 (i) (1) Section 8 of the United States Cotton Standards Act (42
39 Stat. 1517), is amended to read as follows:

1 “SEC. 8. It shall be unlawful for any person to display or use any
2 such practical form or copy after the Secretary of Agriculture shall
3 have caused it to be condemned.”

4 (2) Subsection (b) of section 9 of such Act is amended by striking
5 “shall knowingly falsify or forge any certificate of classification, or
6 shall accept money or other consideration, either directly or indirectly,
7 for any negligent or improper performance of duty as such licensee.”

8 (3) Section 9 of such Act is further amended by striking subsec-
9 tion (c) and (d).

10 (j) Section 108 of the Federal Plant Quarantine Act (71 Stat. 31),
11 is amended to read as follows:

12 “SEC. 108. Any person who violates section 103 of this Act or any
13 rule or regulation promulgated under this Act or who without author-
14 ity from the Secretary uses or defaces any permit or other document
15 provided for by this Act or the rules or regulations thereunder shall
16 be guilty of a regulatory offense under section 2-8F6 of title 18, United
17 States Code.”

18 (k) Section 10 of the Plant Quarantine Act (37 Stat. 318), is amend-
19 ed to read as follows:

20 “SEC. 10. That any person who shall violate any of the provisions
21 of this Act or destroy any certificate provided for in this Act or in the
22 rules and regulations of the Secretary of Agriculture shall be guilty of
23 a regulatory offense under section 2-8F6 of title 18, United States
24 Code, except that it shall be an affirmative defense for a common car-
25 rier if such carrier did not knowingly receive for transportation or
26 transport nursery stock or other plants or plant products as such from
27 one State, territory, or district of the United States into or through
28 any other State, territory, or district; and it shall be the duty of the
29 United States Attorneys diligently to prosecute any violations of this
30 Act which are brought to their attention by the Secretary of Agri-
31 culture or which come to their notice by other means.”

32 (l) Chapter 144 of the Terminal Inspection Act (38 Stat. 1113), is
33 amended by striking the last sentence in the third paragraph of the
34 subsection entitled “ENFORCEMENT OF THE PLANT-
35 QUARANTINE ACT” and inserting in lieu thereof the following:
36 “Whoever shall fail to so mark said packages shall be guilty of a mis-
37 demeanor, except that the maximum fine shall be \$100.”

38 (m) (1) Section 303 of the Packers and Stockyards Act of 1921 (46
39 Stat. 163), is amended by striking the last sentence and inserting in
40 lieu thereof the following: “Whoever violates the provisions of this
41 section shall be guilty of a misdemeanor, except that the maximum fine

1 shall be \$500 and not more than \$25 for each day such violation
2 continues”.

3 (2) Subsection (h) of section 306 of such Act is amended to read
4 as follows:

5 “(h) Whoever knowingly fails to comply with the provisions of
6 this section or of any rule or regulation or order of the Secretary made
7 thereunder shall be guilty of a regulatory offense under section 2-8F6
8 of title 18, United States Code.”

9 (3) The second sentence of section 314 (a) of such Act is amended
10 by striking “offense” and inserting in lieu thereof “violation”.

11 (4) Section 502 (a) of such Act is amended by striking the last sen-
12 tence and inserting in lieu thereof the following: “Any person who
13 violates any provision of this subsection shall be guilty of a misde-
14 meanor, except that the maximum fine shall be \$500.”

15 (n) Section 30 of the United States Warehouse Act (39 Stat. 490),
16 is amended by striking “forge, alter, counterfeit, simulate, or” from
17 the first sentence.

18 (o) Section 2 of the Act of August 31, 1922 (42 Stat. 834, Honeybee
19 Act), is amended to read as follows:

20 “SEC. 2. Any person who shall violate any of the provisions of this
21 Act shall be guilty of a Class E felony, except that the maximum
22 fine shall be \$500.”

23 (p) (1) Section 2 of the Act of March 3, 1927 (44 Stat. 1373, Cotton
24 Statistics and Estimates Act), is amended by striking the second sen-
25 tence.

26 (2) Section 3 of such Act is amended by striking from the last sen-
27 tence “or shall willfully give answers that are false or”.

28 (q) Section 1 of the Act of March 3, 1927 (44 Stat. 1355), is amended
29 by striking “corporation” in line 2 and by striking “misdemeanor and
30 upon conviction shall be punished by a fine of not less than \$100 and
31 not more than \$3,000 or be imprisoned for a period of not exceeding
32 1 year, or both, at the discretion of the court” and inserting in lieu
33 thereof “Class E felony, except that the maximum fine shall be
34 \$3,000.”

35 (r) Section 14 of the Perishable Agricultural Commodities Act of
36 1930 (46 Stat. 537), is amended by striking subsection (b) and strik-
37 ing subsection designation (a).

38 (s) Section 3 of the Act of January 14, 1929 (45 Stat. 1080), is
39 amended by striking the last sentence and inserting in lieu thereof the
40 following: “Any person, firm, association or corporation required by
41 this Act to furnish a report and any officer, agent, or employee thereof

1 who shall refuse or willfully neglect to furnish any of the information
2 required by this Act shall be guilty of a Class E felony.”

3 (t) (1) Section 10 of the Act of August 23, 1935 (49 Stat. 733), is
4 amended by—

5 (A) striking subsection (b) ;

6 (B) striking in subsection (d) “or to accept money or other
7 consideration, directly or indirectly, for any neglect or improper
8 performance of duty as an inspector, sampler, or weigher.”;

9 (C) striking subsection (e) ;

10 (D) striking subsection (f) ; and

11 (E) striking in subsection (g) “, or attempt to substitute,”.

12 (2) Section 12 of such Act is amended to read as follows :

13 “SEC. 12. That any person violating any provision of sections 5 and
14 10 of this Act shall be guilty of a Class E felony.”

15 (u) Section 2 of the Act of June 5, 1940 (54 Stat. 231), is amended
16 to read as follows :

17 “SEC. 2. Any person violating any of the provisions of this Act
18 shall be guilty of a Class E felony, except that the maximum fine shall
19 be \$5,000.”

20 (v) (1) Subsection 14 of section 8c of the Agricultural Adjustment
21 Act (49 Stat. 753), is amended to read as follows :

22 “(14) Any handler subject to an order issued under this section
23 or any officer, director, agent, or employee of such handler who violates
24 any provision of such order (other than a provision calling for a pay-
25 ment of a pro rata share of expenses) shall be guilty of a regulatory
26 offense under section 2-8F6 of title 18, United States Code, except that
27 it shall be an affirmative defense if the court finds that a petition
28 pursuant to subsection (15) of this section was filed and prosecuted by
29 the defendant in good faith and not for delay, no penalty shall be
30 imposed under this subsection for such violations as occurred between
31 the date upon which the defendant’s petition was filed with the Sec-
32 retary and the date upon which notice of the Secretary’s ruling thereon
33 was given to the defendant in accordance with rules and regulations
34 prescribed pursuant to subsection (15).”

35 (2) Section 8d of such Act is amended by striking the last sentence
36 in subsection 2 thereof.

37 (3) Section 10 of the Agricultural Adjustment Act (48 Stat. 37),
38 is amended by—

39 (A) striking the last sentence in subsection (c) and inserting
40 in lieu thereof the following: “Any violation of any rule or

1 regulation shall be a regulatory offense under section 2-8F6 of
2 title 18, United States Code.”; and

3 (B) striking the last sentence of subsection (g) and inserting
4 in lieu thereof the following: “Any person violating this sub-
5 section shall be guilty of a Class D felony, except that the maxi-
6 mum fine shall be \$10,000.”.

7 (4) Section 8a of the Agricultural Adjustment Act (48 Stat. 672),
8 is amended by striking subsection (4) and inserting in lieu thereof
9 the following:

10 “(4) Any person knowingly violating any order or rule or regula-
11 tion of the Secretary of Agriculture issued under this section shall
12 be guilty of a regulatory offense under section 2-8F6 of title 18,
13 United States Code.”

14 (w) Section 6 of the Act of June 10, 1933 (48 Stat. 124), is amended
15 by striking the last sentence and inserting in lieu thereof the following:
16 “Any person or any common carrier or any transportation agency
17 knowingly violating any of the provisions of this Act shall be guilty
18 of a Class D felony, except that the maximum fine shall be \$10,000.”

19 (x) (1) Subsection (b-3) (1) of the Agricultural Adjustment Act,
20 as amended (48 Stat. 39), is further amended by striking “mis-
21 demeanor and upon conviction thereof shall be fined not more than
22 \$1,000 or imprisoned for not more than 1 year, or both” and inserting
23 in lieu thereof “Class E felony, except that the maximum fine shall
24 be \$1,000.”

25 (2) Subsection (b-3) (2) is amended to read as follows: “Any
26 person who with intent to defraud, secures any tax payment warrant
27 with respect to rice as to which any tax payment warrant has there-
28 tofore been issued, shall be guilty of a Class E felony, except that the
29 maximum fine shall be \$1,000.”

30 (3) (A) Subsection (a) of the Agricultural Adjustment Act (48
31 Stat. 677), is amended by striking “and, upon conviction thereof, shall
32 be punished by a fine of not more than \$1,000 or be imprisoned for not
33 exceeding 6 months, or both”.

34 (B) Subsection (b) of such section is amended by striking “and,
35 upon conviction thereof, shall be punished by a fine of not more than
36 \$1,000 or be imprisoned for not exceeding 6 months, or both”.

37 (C) Subsection (c) of such section is amended by striking “and,
38 upon conviction thereof, shall be punished by a fine of not more
39 than \$1,000 or be imprisoned for not exceeding 6 months, or both”.

40 (y) Section 3 of the Act of June 24, 1936 (49 Stat. 1899), is amended

1 by striking the last sentence and inserting in lieu thereof "any person
2 required by this Act or the rules or regulations promulgated there-
3 under, to furnish reports or information and any officer, agent, or
4 employee thereof who shall refuse or shall knowingly give answers
5 that are false and misleading shall be guilty of a Class E felony."

6 (z) Subsection (f) of section 32 of the Act of July 22, 1937 (50 Stat.
7 525), is amended to read as follows:

8 "(f) Any violation of such rules and regulations shall be a regula-
9 tory offense under section 2-8F6 of title 18, United States Code."

10 (aa) (1) Section 403(a) of the Sugar Act of 1948 (61 Stat. 932),
11 is amended by striking the last sentence and inserting in lieu thereof
12 the following: "Any person knowingly violating any order or regu-
13 lation of the Secretary issued pursuant to this Act shall be guilty of
14 a regulatory offense under section 2-8F6 of title 18, United States
15 Code."

16 (2) Section 406 of such Act is amended by striking the last sen-
17 tence and inserting in lieu thereof "Any person knowingly failing or
18 refusing to furnish such information shall be guilty of a misde-
19 meanor."

20 (3) Section 407 of such Act is amended by striking the second to the
21 last sentence and inserting in lieu thereof the following: "Any person
22 violating this section shall be guilty of a Class D felony, except that
23 the maximum fine shall be \$10,000."

24 (bb) Section 373(a) of the Agricultural Act of 1938 (52 Stat. 65),
25 is amended by striking the last sentence and inserting in lieu thereof
26 the following: "Any such person failing to make any report or keep
27 any record as required by this subsection or making any false report
28 shall be guilty of a misdemeanor."

29 (cc) (1) Subsection (b) of section 379i (76 Stat. 629), is amended
30 to read as follows:

31 "(b) Any person, except a producer in his capacity as a producer,
32 who violates any provision of this subtitle or any rule or regulation
33 governing the acquisition, disposition or handling of marketing cer-
34 tificates or who fails to make any report or keep any record as required
35 by section 379h shall be guilty of a misdemeanor, except that the
36 maximum fine shall be \$5,000."

37 (2) Subsection (d) of such section is repealed.

38 (dd) Subsection (a) of section 380o of the Agricultural Adjustment
39 Act of 1938 (70 Stat. 211), is amended to read as follows: "The pro-
40 visions of section 373(a) of this Act shall apply to all persons except
41 rice producers who are subject to the provisions of this subtitle ex-

cept that any such person failing to make any report or keep any record as required by this section or making any false report shall be guilty of a misdemeanor, except that the maximum fine shall be \$2,000."

(ee) Section 421 of the Agricultural Act of 1949, as amended (78 Stat. 927), is further amended by striking "misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year" and inserting in lieu thereof the following: "Class E felony, except that the maximum fine shall be \$1,000."

(ff) Section 406 of the Federal Seed Act (53 Stat. 1286), is amended to read as follows:

"SEC. 406. Any person who violates any provision of this Act or the rules and regulations made and promulgated thereunder shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."

(gg) Subsection (h) of section 203 of the Agricultural Marketing Act of 1946 (60 Stat. 1087), is amended by striking the last sentence and inserting in lieu thereof "Whoever knowingly represents that an agricultural product has been officially inspected or graded (by an authorized inspector or grader) under the authority of this section and such commodity has in fact not been so graded or inspected shall be guilty of a Class E felony, except that the maximum fine shall be \$1,000."

(hh) Subsection (c) of section 3 of the International Wheat Grain Act of 1949 (63 Stat. 946), is amended to read as follows: "Any person failing to make any record as required by or pursuant to this section or making any false record or knowingly violating any rule or regulation of the President issued pursuant to this section shall be deemed guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."

(ii) Subsection (a) of section 7 of the Act of August 2, 1956 (70 Stat. 935), is amended by striking out "281, 283, 284, 434, 1902, 1905, and 1914" and inserting in lieu thereof "2-6F1 and 2-6F3".

(jj) Section 3 of the Act of August 27, 1958 is amended by striking the last sentence and inserting in lieu thereof the following: "After June 30, 1960, each supplier from which any livestock products are procured for any agency of the Federal government shall be required by such agency to make a statement of eligibility under this section to supply such livestock products."

(kk) Section 336 of the Consolidated Farmers Home Administration Act of 1961 (75 Stat. 316), is amended by striking the last sentence and inserting in lieu thereof the following: "Any person violating any provision of this section shall be guilty of a Class E felony, except that the maximum fines shall be \$2,000."

(ll) (1) Subsection (b) of section 14 of the Food Stamp Act of 1964 (78 Stat. 708), is amended to read as follows:

"(b) Whoever knowingly uses, transfers, acquires or possesses coupons in any manner not authorized by this Act or the rules and regulations issued pursuant to this Act shall be guilty of a Class D felony, except that the maximum fine shall be \$10,000."

(2) Subsection (c) of such section is amended to read as follows:

"(c) Whoever presents or causes to be presented coupons for payment or redemption knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act shall be guilty of a Class E felony, except that the maximum fine shall be \$10,000."

(3) Subsection (d) of such section is repealed.

(mm) (1) Subsection (b) (7) of section 5 of the Farm Labor Contract Registration Act of 1963 (78 Stat. 921), is amended to read as follows:

"(7) has been convicted of any crime under State or Federal law relating to gambling or to the sale, distribution or possession of alcoholic liquors in connection with or incident to his activities as a farm labor contractor; or has been convicted of any crime under State or Federal law involving robbery, bribery, felonious theft, burglary, arson, drug felony, murder, rape, attempted murder, or prostitution;".

(2) Section 9 of such Act is amended to read as follows:

"SEC. 9. Any farm labor contractor or employee thereof who knowingly violates any provision of this Act or any rule or regulation prescribed hereunder shall be guilty of a misdemeanor."

(nn) (1) Section 6(c) of the Cotton Research Promotion Act (80 Stat. 280), is amended by striking out the last sentence.

(2) Section 13(b) of such Act is amended by striking "offense" and inserting in lieu thereof "violation".

(oo) (1) Subsection (c) of section 19 of the Act of August 24, 1966 (80 Stat. 352), is amended to read as follows:

"(c) Any dealer who violates any provision of this bill shall be guilty of a Class E felony, except that the maximum fine shall be \$1,000."

1 (2) Section 20(a) of such Act is amended by striking "offense" in
2 the third sentence and inserting in lieu thereof "violation".

3 PART E—TITLE 8, U.S.C., AMENDMENTS

4 ALIENS AND NATIONALITY

5 SEC. 306. (a) The Act entitled "An Act to prohibit the 'Coolie
6 Trade' by American Citizens in American Vessels", approved Febru-
7 ary 19, 1862 (8 U.S.C. 331-335, 337), is repealed.

8 (b) (1) Section 2 of the Act entitled "An act supplementary to the
9 acts in relation to immigration", approved March 3, 1875 (8 U.S.C.
10 338), is amended to read as follows:

11 "SEC. 2. Any contract or other agreement for a term of service in
12 the United States of any subject of China, Japan, or any other oriental
13 country who is taken to or from the United States without his free and
14 voluntary consent is void."

15 (2) Section 4 of such Act (8 U.S.C. 339), is repealed.

16 (c) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.),
17 is amended as follows:

18 (1) The second sentence of section 212(a) (9) is amended to
19 read as follows: "Any alien who would be excludable because of
20 the conviction of a crime for which the penalty imposed did not
21 exceed imprisonment for a period of six months or a fine of \$500,
22 or both, or who would be excludable as one who admits the com-
23 mission of a crime for which the penalty which might have been
24 imposed was imprisonment for a term of one year or less, may be
25 granted a visa and admitted to the United States if otherwise ad-
26 missible: *Provided*, That the alien has committed only one such
27 crime, or admits the commission of acts which constitute the
28 essential elements of only one such crime;".

29 (2) (A) In section 215(a)—

30 (i) strike out "or attempt to depart from or enter" in clause

31 (1);

32 (ii) strike out "or attempt to transport" in clause (2);

33 (iii) strike out clause (3);

34 (iv) strike out "or attempt to furnish" in clause (4);

35 (v) strike out "or attempt to use" and strike out "or enter"
36 in clause (5);

37 (vi) strike out clause (6); and

38 (vii) strike out "or attempt to use" and strike out "any
39 false, forged counterfeited, mutilated, or altered permit, or
40 evidence of permission, or" in clause (7);

(B) in section 215(b), strike out “or attempt to depart from or enter,”; and

(C) in section 215(c)—

(i) strike out “willfully” and insert in lieu thereof “knowingly”; and

(ii) strike out “and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both;”.

(3) In the sixth sentence of section 235(a) strike out “and to that end may invoke the aid of any court of the United States” and insert in lieu thereof “and any such subpoena shall be subject to section 2-6C2 of title 18, United States Code”.

(4) In the last sentence of section 237(b), strike out “fine” each place it appears, and insert in lieu thereof “civil penalty”.

(5) (A) In section 241(a) (5), strike out “section 1546 of title 18 of the United States Code” and insert in lieu thereof “section 2-5D1 of title 18, United States Code, under section 2-6D1, 2-6D2, 2-8E2, 2-8E3, or 2-8E6 of such title with respect to any visa, permit, or other document required for entry into the United States, or under section 2-6D1 or 2-6D2 of such title with respect to any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder”.

(B) Section 241(a) (17) is amended to read as follows:

“(17) the Attorney General finds to be an undesirable resident of the United States by reason of any of the following, to wit: has been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts or any amendment thereto, the judgment on such conviction having become final, namely: an Act entitled ‘An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes’, approved June 15, 1917, or the amendment thereof approved May 16, 1918; sections 2-5B6, 2-5B7, 2-5B8, and 2-5B10 of title 18, United States Code, and an attempt to violate the same; section 2-6B3 of such title with respect to a person who violated section 2-5B6 or 2-6D2(a) (6) of such title; an Act entitled ‘An Act to prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage,

1 use, and possession of the same, and for other purposes', approved
2 October 6, 1917; an Act entitled 'An Act to prevent in time of
3 war departure from and entry into the United States contrary
4 to the public safety', approved May 22, 1918; section 215 of this
5 Act; an Act entitled 'An Act to punish the willful injury or
6 destruction of war material or of war premises or utilities used
7 in connection with war material, and for other purposes', ap-
8 proved April 20, 1918; section 2-5B4 of title 18, United States
9 Code, and an attempt to violate the same; an Act entitled 'An
10 Act to authorize the President to increase temporarily the Mili-
11 tary establishment of the United States', approved May 18, 1917,
12 or any amendment thereof or supplement thereto; the Selective
13 Training and Service Act of 1940; the Selective Service Act of
14 1948; the Universal Military Training and Service Act; section
15 2-5B5 of title 18, United States Code, or an attempt to violate
16 the same; section 2-7C5 of title 18, United States Code; an Act
17 entitled 'An Act to define, regulate, and punish trading with the
18 enemy, and for other purposes', approved October 6, 1917, or any
19 amendment thereof; the Trading With the Enemy Act; section
20 6 of the Penal Code of the United States; section 2-5B3 of title
21 18, United States Code, or an attempt to violate the same; section
22 2-5C1 of title 18, United States Code; or".

23 (6) (A) Strike out the last sentence of section 242(d) and insert
24 in lieu thereof the following: "Any alien who knowingly violates any
25 such regulation, knowingly fails to appear or to give information or
26 submit to medical or psychiatric examination if required, or know-
27 ingly violates a reasonable restriction imposed upon his conduct or
28 activity, shall be guilty of a regulatory offense under section 2-8F6 of
29 title 18, United States Code."

30 (B) In the first sentence of subsection (e) of such section, strike
31 out "felony and shall be imprisoned not more than ten years" and
32 insert in lieu thereof "Class D felony, except that no fine shall be
33 imposed."

34 (C) In such subsection (e), strike out "willfully" each place it
35 appears and insert in lieu thereof "knowingly".

36 (7) In section 251(d), strike out "fine" each place it appears and
37 insert in lieu thereof "civil penalty".

38 (8) Section 252(c) is amended to read as follows:

39 "(c) Any alien crewman who knowingly remains in the United
40 States in excess of the number of days allowed in any conditional

1 permit issued under subsection (a) shall be guilty of a misdemeanor,
2 except that the maximum fine shall be \$500.”

3 (9) In section 254(a), strike out “fine” each place it appears and
4 insert in lieu thereof “civil penalty”.

5 (10) In the last sentence of section 256, strike out “fine” and insert
6 in lieu thereof “civil penalty”.

7 (11) The last sentence of section 264(e) is amended to read as
8 follows: “Violation of the provisions of this subsection is a misde-
9 meanor, except that the maximum fine shall be \$100.”

10 (12) Section 266 is amended to read as follows:

11 “PENALTIES

12 “Sec. 266. (a) Any alien required to apply for registration and to
13 be fingerprinted in the United States who knowingly fails or refuses
14 to make such application or to be fingerprinted, and any parent or
15 legal guardian required to apply for the registration of any alien who
16 knowingly fails or refuses to file application for the registration of
17 such alien shall be guilty of a misdemeanor.

18 “(b) Any alien or any parent or legal guardian in the United
19 States of any alien who fails to give written notice to the Attorney
20 General, as required by section 265 of this title, shall be guilty of a
21 misdemeanor, except that the maximum fine shall be \$200. Irrespective
22 of whether an alien is convicted and punished as herein provided, any
23 alien who fails to give written notice to the Attorney General, as
24 required by section 265, shall be taken into custody and deported in
25 the manner provided by chapter 5 of this title, unless such alien estab-
26 lishes to the satisfaction of the Attorney General that such failure
27 was reasonably excusable or was not reckless.

28 “(c) Any alien convicted of filing an application for registration
29 containing statements known by him to be false, or of procuring or
30 attempting to procure registration of himself or another person
31 through fraud, shall, upon the warrant of the Attorney General, be
32 taken into custody and be deported in the manner provided in chapter 5
33 of this title.”

34 (13) (A) In section 272(c)—

35 (i) strike out “fine” and insert in lieu thereof “civil penalty”;
36 and

37 (ii) strike out “fines” each place it appears and insert in lieu
38 thereof “civil penalties”.

39 (B) In section 272(d), strike out “fine” and insert in lieu thereof
40 “civil penalty”.

1 (14) In section 273(d) strike out "fine" each place it appears and
2 insert in lieu thereof "civil penalty".

3 (15) Section 274 is amended to read as follows:

4 "AUTHORITY TO ARREST

5 "SEC. 274. No person, other than officers and employees of the Service
6 designated by the Attorney General, either individually or as a class,
7 and any other officers whose duty it is to enforce the criminal laws, shall
8 have authority to make any arrest for a violation of sections 2-5D1 or
9 2-5D2 of title 18, United States Code, or any attempt to violate any
10 such section."

11 (16) Section 275 is repealed.

12 (17) Section 276 is repealed.

13 (18) Section 277 is repealed.

14 (19) Section 278 is repealed.

15 (20) In section 280, strike out "fine,".

16 (21) In section 286(b) strike out "fines and".

17 (22) In section 287(b) strike out "; and any person to whom such
18 oath has been administered, under the provisions of this Act, who shall
19 knowingly or willfully give false evidence or swear to any false state-
20 ment concerning any matter referred to in this subsection shall be
21 guilty of perjury and shall be punished as provided by section 1621,
22 title 18, United States Code".

23 (23) In section 314—

24 (A) strike out "of any office of trust or profit under the United
25 States, or"; and

26 (B) before the period at the end thereof, insert the following
27 " , and shall be subject to section 1-4A3 of title 18, United States
28 Code".

29 (24) At the end of section 335(b) add the following new sentence:
30 "Any subpoena issued under this section shall be subject to section
31 2-6C2 of title 18, United States Code."

32 (25) In section 340(g), strike out "1425" and insert in lieu thereof
33 "2-5D3".

34 (26) In section 349(a)(9) strike out "2383 of title 18 United
35 States Code, or willfully performing any act in violation of section
36 2385 of title 18, United States Code, or violating section 2384 of said
37 title by engaging in a conspiracy to overthrow, put down, or to de-
38 stroy by force the Government of the United States, or to levy war
39 against them," and insert in lieu thereof "2-5B3 of title 18, United
40 States Code,"

(27) At the end of chapter 4, add the following new section :

“SURRENDER OF NATURALIZATION CERTIFICATE

“SEC. 361. A person is guilty of a Class D felony if he has in his possession or control a certificate of naturalization or citizenship or a copy thereof which has been canceled as provided by law, and fails to surrender the same after at least sixty days’ notice by the appropriate court or the Commissioner or Deputy Commissioner of Immigration.”

PART F—TITLE 9, U.S.C., AMENDMENTS

SEC. 307. Section 7 of title 9, United States Code, is amended by striking out the semicolon and all that follows thereafter and inserting in lieu thereof a period and the following new sentence: “The provisions of section 2-6C2 of title 18, United States Code, shall be applicable with respect to any summons issued pursuant to this section.”.

PART G—TITLE 10, U.S.C., AMENDMENTS

SEC. 308. (a) Section 504 of title 10, United States Code, is amended by adding at the end thereof the following new sentence: “Notwithstanding the foregoing provisions of this section, no person shall be denied the right to so enlist on the basis of a felony if a period of not less than five years has expired following the completion by such person of any sentence imposed in connection therewith.”.

(b) Section 2276 (c) of title 10, United States Code, is amended (1) by deleting “or attempts to deprive”, and (2) by striking out “fined not more than \$20,000 or imprisoned for not more than five years, or both” and inserting in lieu thereof “deemed guilty of a Class D felony, except that the maximum fine shall be \$20,000”.

(c) Section 2671(c) of title 10, United States Code, is amended to read as follows:

“(c) Nothing in this section shall be deemed to be Federal law which penalizes or immunizes the conduct proscribed under subsection (a) (1) or (2).”.

(d) Section 4501 (f) of title 10, United States Code, is amended by deleting “imprisoned for not more than three years and fined not more than \$50,000” and inserting in lieu thereof “guilty of a Class D felony, except that the maximum fine shall be \$50,000”.

(e) Section 7678 of title 10, United States Code, is amended (1) by deleting “willfully does, or aids or advises in the doing of,” and inserting in lieu thereof “knowingly does”, and (2) by deleting “fined not more than \$10,000 or imprisoned not more than five years, or both”

1 and inserting in lieu thereof "guilty of a Class D felony, except that
2 the maximum fine shall be \$10,000".

3 (f) Section 9501(f) of title 10, United States Code, is amended by
4 deleting "imprisoned for not more than three years and fined not more
5 than \$50,000" and inserting in lieu thereof "guilty of a Class D felony,
6 except that the maximum fine shall be \$50,000".

7 SEC. 309. (a) Title 10, United States Code, is amended by adding
8 immediately after chapter 49 thereof the following new chapter:

9 **"Chapter 50.—MISCELLANEOUS OFFENSES**

"Sec.

"981. Discrimination against person wearing uniform of armed forces.

"982. Uniform of armed forces.

"983. Military medals or decorations.

"984. Cremation urns for military use.

"985. Purchase or receipt of military, naval, or veteran's facilities property.

"986. Restrictions in military areas and zones.

"987. Use of Army and Air Force as posse comitatus.

10 **"§ 981. Discrimination against person wearing uniform of armed**
11 **forces**

12 "Whoever, being a proprietor, manager, or employee of a theater or
13 other public place of entertainment or amusement in the District of
14 Columbia, or in any Territory, or Possession of the United States,
15 causes any person wearing the uniform of any of the armed forces of
16 the United States to be discriminated against because of that uniform,
17 shall be guilty of a violation, except that the maximum fine shall
18 be \$500.

19 **"§ 982. Uniform of armed forces**

20 "Whoever, in any place within the jurisdiction of the United States
21 or in the Canal Zone, without authority, wears the uniform or a dis-
22 tinctive part thereof or anything similar to a distinctive part of the
23 uniform of any of the armed forces of the United States or any auxi-
24 liary of such, shall be guilty of a misdemeanor, except that the maxi-
25 mum fine shall be \$250.

26 **"§ 983. Military medals or decorations**

27 "Whoever knowingly wears, manufactures, or sells any decoration
28 or medal authorized by Congress for the armed forces of the United
29 States, or any of the service medals or badges awarded to the members
30 of such forces, or the ribbon, button, or rosette of any such badge,
31 decoration or medal, or any colorable imitation thereof, except when
32 authorized under regulations made pursuant to law, shall be guilty of a
33 misdemeanor, except that the maximum fine shall be \$250.

34 **"§ 984. Cremation urns for military use**

35 "Whoever knowingly uses, manufactures, or sells any cremation urn
36 of a design approved by the Secretary of Defense for use to retain the

cremated remains of deceased members of the armed forces or an urn which is a colorable imitation of the approved design, except when authorized under regulation made pursuant to law, shall be guilty of a misdemeanor, except that the maximum fine shall be \$250.

“§ 985. Purchase or receipt of military, naval, or veteran’s facilities

“Whoever purchases, or receives in pledge from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States under a clothing allowance or otherwise, to any member of the Armed Forces of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, or to any former member of such Armed Forces at or by any hospital, home, or facility maintained by the United States, having knowledge or reason to believe that the property has been taken from the possession of or furnished by the United States under such allowance, or otherwise, shall be guilty of a misdemeanor, except that the maximum fine shall be \$500.

“§ 986. Restrictions in military areas and zones

“Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive Order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be deemed guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$5000.

“§ 987. Use of Army and Air Force as posse comitatus

“Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, knowingly uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be guilty of a Class E felony, except that the maximum fine shall be \$10,000.”.

(b) (1) The title analysis for subtitle A of title 10, United States Code, is amended by inserting immediately after

“49. Miscellaneous Prohibitions and Penalties----- 971”
the following:

“50. Miscellaneous Offenses----- 981”.

(2) The chapter analysis for part II of subtitle A of title 10, United States Code, is amended by inserting immediately after

1 "49. Miscellaneous Prohibitions and Penalties..... 971"

2 the following:

3 "50. Miscellaneous Offenses..... 981".

4 PART H—TITLE 11, U.S.C., AMENDMENTS

5 SEC. 310. (a) Clause (1) of subsection (c) of section 14 of the Act
6 of July 1, 1898 (11 U.S.C. 32), is amended to read as follows: "(1)
7 committed an offense proscribed by section 2-8F1 of title 18, United
8 States Code, or, in relation to the bankruptcy proceeding, committed a
9 crime proscribed by section 2-6C1, 2-6D1, 2-6D2, 2-6D3, 2-6E1, or
10 2-8D3 of such title; or".

11 (b) The second sentence of section 20(b) of such Act of July 1, 1898,
12 is repealed.

13 (c) Section 64 (a) of such Act of July 1, 1898, is amended (1) by
14 deleting "chapter 9 of title 18," wherever it appears therein and in-
15 serting in lieu thereof "section 2-8F1 of title 18, United States Code,
16 or section 2-6C1, 2-6D1, 2-6D2, 2-6D3, 2-6E1, 2-8D3, or 2-8D6 of
17 such title with respect to a bankruptcy, or section 35 (b) or 54 of this
18 Act,".

19 SEC. 311. (a) Section 35 of the Act of July 1, 1898 (11 U.S.C. 63),
20 is amended by designating the existing text as subsection (a) and by
21 adding at the end thereof the following new subsection:

22 "(b) Whoever knowingly acts as a referee in a case in which he is
23 directly or indirectly interested; or

24 "Whoever, being a referee, receiver, custodian, trustee, marshal, or
25 other officer of the court, knowingly purchases, directly or indirectly,
26 any property of the estate of which he is such officer in a bankruptcy
27 proceeding; or

28 "Whoever being such officer, knowingly refuses to permit a reason-
29 able opportunity for the inspection of the documents and accounts
30 relating to the affairs of estates in his charge by parties in interest
31 when directed by the court to do so—

32 "Shall be guilty of a violation, except that the maximum fine shall
33 be \$500, and shall be subject to the provisions of section 1-4A3 of title
34 18, United States Code."

35 (b) Such Act of July 1, 1898, is amended by adding immediately
36 after section 53 thereof the following new section:

37 "SEC. 54. Whoever, being a party in interest, whether as a debtor,
38 creditor, receiver, trustee or representative of any of them, or attorney
39 for any such party in interest, in any receivership, bankruptcy, or re-
40 organization proceeding in any United States court or under its su-
41 pervision, enters into any agreement, expressed or implied, with an-

1 other such party in interest or any attorney for another such party in
 2 interest, for the purpose of fixing the fees or other compensation to be
 3 paid to any party in interest or to any attorney for any party in interest
 4 for services rendered in connection therewith, from the assets of the
 5 estate; or

6 “Whoever, being a judge of a court of the United States knowingly
 7 approves the payment of any fees or compensation so fixed—

8 “Shall be guilty of a Class E felony, except that the maximum fine
 9 shall be \$5,000.”

10 **PART I—TITLE 12, U.S.C., AMENDMENTS**

11 **SEC. 312. (a)** The second sentence of section 1(h) of the Act of
 12 September 28, 1962 (12 U.S.C. 92a(h)), is amended by striking out all
 13 after “made,” and by inserting in lieu thereof “shall be guilty of a
 14 Class D felony, except that the maximum fine shall be \$5,000.”

15 (b) The second sentence of section 4 of the Act of March 9, 1933
 16 (12 U.S.C. 95) is amended by striking out all after “shall” and insert-
 17 ing in lieu thereof “be guilty of a Class D felony, except that the max-
 18 imum fine shall be \$10,000.”

19 (c) The second sentence of section 5(b)(3) of the Trading With
 20 the Enemy Act, as amended (12 U.S.C. 95a(3)), is amended to read
 21 as follows: “Whoever knowingly violates any provision of this section
 22 or of any license, order, rule or regulation issued under this section
 23 shall be guilty of a regulatory offense under section 2-8F6 of title 18,
 24 United States Code.”

25 (d) (1) Section 209 of the Bank Conservation Act, as amended (12
 26 U.S.C. 209), is amended by striking out “sections 334, 656, and 1005
 27 of Title 18, United States Code; and sections 202, 216, 281, 431, 432,
 28 and 433 of such Title 18,” and inserting in lieu thereof the following:
 29 “subsection (h) of the Banking Crimes Act and sections 9101, 9102,
 30 9113, 9114, and 9115 of title 5, United States Code,”.

31 (2) Section 211 of such Act is amended by striking out all after
 32 “shall” and inserting in lieu thereof “be guilty of a regulatory offense
 33 under section 2-8F6 of title 18, United States Code.”

34 (e) Section 19(d) of the Federal Reserve Act (46 U.S.C. 374a), is
 35 amended by striking out “fine” each place it appears and inserting
 36 in lieu thereof “civil penalty”.

37 (f) Section 21(b) of the Banking Act of 1933, as amended (12
 38 U.S.C. 378(b)) is amended to read as follows:

39 “(b) Whoever knowingly violates any provision of this section shall
 40 be guilty of a Class D felony, except that the maximum fine shall be
 41 \$5,000.”

1 (g) The second sentence of section 5207 of the Revised Statutes (12
2 U.S.C. 582), is amended to read as follows: "Any association which
3 violates the provision of this section shall be guilty of a Class E felony,
4 except that no prison term may be imposed, and any fine imposed
5 shall be increased by an amount equal to one-third the amount of
6 money loaned."

7 (h)(1) The third sentence of the eleventh paragraph of section
8 25(a) of the Federal Reserve Act (12 U.S.C. 617), is amended to
9 read as follows: "It shall be unlawful for any director, officer, agent
10 or employee of any such corporation to use the credit, funds, or the
11 power of the corporation to fix or control the price of any such
12 commodities, and any person who violates this provision shall be
13 guilty of a Class E felony, except that a fine of not less than \$1,000
14 and not more than \$5,000 shall be imposed."

15 (2) The twenty-fourth paragraph of section 25(a) of such Act, as
16 amended (12 U.S.C. 630), is repealed.

17 (3) The twenty-fifth paragraph of section 25(a) of such Act (12
18 U.S.C. 631), is amended by striking out all after "omission of the
19 corporation" and inserting in lieu thereof a comma and the following:
20 "shall be guilty of a Class E felony, except that the maximum fine
21 shall be \$10,000."

22 (i) Section 5(i) of the Farm Credit Act of 1937 (12 U.S.C. 630i),
23 is amended by striking out "No person" and inserting in lieu thereof
24 "Subject to section 1-4A3 of title 18, United States Code, no person".

25 (j) Section 15 of the Agricultural Marketing Act (12 U.S.C. 1141j),
26 is amended as follows:

27 (1) In subdivision (b), strike out the second sentence and insert
28 in lieu thereof the following: "Violation of this subdivision shall be
29 a Class D felony, except that the maximum fine shall be \$10,000."

30 (2) In subdivision (c), strike out "shall be fined not more than
31 \$5,000, or imprisoned not more than five years, or both" and insert
32 in lieu thereof "shall be guilty of a Class E felony, except that the
33 maximum fine shall be \$5,000".

34 (3) In subdivision (d), strike out " , upon conviction thereof, be
35 fined not less than \$500 or more than \$5,000, or imprisoned for not
36 more than five years, or both" and insert in lieu thereof "be guilty
37 of a Class E felony, except that a fine of not less than \$500 or more
38 than \$5,000 shall be imposed".

39 (k) Section 308 of the Emergency Home Finance Act of 1970 (12
40 U.S.C. 1457), is amended as follows:

(1) In subsection (a), strike out the last two sentences and insert in lieu thereof the following: "Any person who violates this subsection or knowingly acquiesces in any such violation shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000."

(2) Strike out subsection (b).

(3) Strike out subsection (c).

(4) Strike out subsection (d).

(5) Strike out subsection (e).

(6) Strike out subsection (f).

(1) Section 5(d)(12) of the Home Owner's Loan Act of 1933, as amended (12 U.S.C. 1464(d)(12)), is amended as follows:

(1) In subparagraph (A), strike out all after "Corporation," and insert in lieu thereof "shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000."

(2) In subparagraph (B) after the word "Board" the first place it appears insert ", subject to section 1-4A3 of title 18, United States Code."

(3) In subparagraph (C), strike out all after "demand shall be" and insert in lieu thereof the following: "guilty of a Class E felony, except that the maximum fine shall be \$5,000."

(m)(1) The last paragraph of section 207(b) of the National Housing Act, as amended (12 U.S.C. 1713(b)), is amended by striking out "misdemeanor punishable by a fine of not to exceed \$500" and inserting in lieu thereof "misdemeanor, except that the maximum fine shall be \$500".

(2) Section 239(b) of such Act (12 U.S.C. 1715z-4(b)), is amended by striking out "fined not more than \$5,000 or imprisoned not more than three years or both" and inserting in lieu thereof "guilty of a Class D felony, except that the maximum fine shall be \$5,000".

(3) The last sentence of section 402 (g) of such Act (12 U.S.C. 1725 (g)), is amended by striking out all after "shall be" and inserting in lieu thereof "guilty of a Class E felony, except that the maximum fine shall be \$1,000."

(4) Section 407 (p) (1) of such Act, as amended (12 U.S.C. 1730(p)(1)), is amended by striking out "upon conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "be guilty of a Class E felony, except that the maximum fine shall be \$5,000".

(5) Section 408 (j) of such Act, as amended (12 U.S.C. 1730a(j)), is amended as follows:

1 (A) In paragraph (1), strike out all after “shall” and insert in lieu
2 thereof “be guilty of a regulatory offense under section 2-8F6 of title
3 18, United States Code, except that the maximum fine shall be \$1,000
4 per day during which the violation continues.”

5 (B) In paragraph (2), strike out all after “shall” and insert in lieu
6 thereof “be guilty of a regulatory offense under section 2-8F6 of title
7 18, United States Code, except that the maximum fine shall be \$10,000.”

8 (C) In paragraph (3), strike out “under section 1006 of title 18,
9 United States Code” and insert in lieu thereof “under subsection (i) of
10 the Miscellaneous Banking Crimes Act of 1973”.

11 (D) In paragraphs (1) and (2) strike “willfully” and insert in lieu
12 thereof “knowingly.”

13 (6) Section 603 (a) of such Act, as amended (12 U.S.C. 1738(a)), is
14 amended by striking out “misdemeanor punishable by a fine of not to
15 exceed \$500” and inserting in lieu thereof “a misdemeanor, except that
16 the maximum fine shall not exceed \$500”.

17 (7) The last sentence of section 903(a) of such Act, as amended
18 (12 U.S.C. 1750(b)(a)), is amended to read as follows: “Violation
19 of any such certification shall be a misdemeanor, except that the maxi-
20 mum fine shall not exceed \$500.”

21 (n)(1) Section 8(j) of the Federal Deposit Insurance Act, as
22 amended (12 U.S.C. 1818(j)), is amended by striking out all after
23 “shall” and inserting in lieu thereof the following: “be guilty of a
24 Class E felony, except that the maximum fine shall be \$5,000.”

25 (2) Section 10(c) of such Act, as amended (12 U.S.C. 1820(c)),
26 is amended by adding at the end thereof the following new sentence:
27 “Any subpoena issued under this section shall be subject to section 2-6C2
28 of title 18, United States Code.”

29 (3) Section 18(b) of such Act, as amended (12 U.S.C. 1828(b)),
30 is amended by striking out all after “any such distribution shall be”
31 and inserting in lieu thereof the following: “guilty of a Class E felony,
32 except that the maximum fine shall be \$1,000. It shall be a defense to
33 liability under this section if, in the case of a default due to a dispute
34 between an insured bank and the Corporation over the amount of such
35 assessment, such bank deposits security satisfactory to the Corporation
36 for payment upon final resolution of the issue.”

37 (4) Section 19 of such Act (12 U.S.C. 1829), is amended by striking
38 out “Except” and inserting in lieu thereof “Subject to section 1-4A3
39 of title 18, United States Code, and except”.

40 (o) Section 8 of the Bank Holding Company Act of 1956, as
41 amended (12 U.S.C. 1847), is amended as follows:

(1) In the first sentence strike out “upon conviction be fined not more than \$1,000 for each day during which the violation continues” and insert in lieu thereof “be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$1,000 for each day during which the violation continues”.

(2) In the second sentence strike out “upon conviction be fined not more than \$10,000 or imprisoned not more than one year, or both” and insert in lieu thereof “be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$1,000”.

(3) In the first and second sentences, strike out “willfully” and insert in lieu thereof “knowingly”.

(4) In the third sentence, strike out “under section 1005 of Title 18” and insert in lieu thereof “under subsection (h) of the Miscellaneous Banking Crimes Act of 1973”.

(p) The text of section 210 of the Credit Control Act (12 U.S.C. 1909), is amended to read as follows: “Whoever knowingly violates any regulation under this title shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code.”

(q) (1) Section 5136A of the Revised Statutes (12 U.S.C. 25a), is amended by adding at the end thereof the following new subsection:

“(f) Violation of this section or any regulation hereunder is a misdemeanor.”

(2) Section 9A of the Federal Reserve Act (12 U.S.C. 339), is amended by adding at the end thereof the following new subsection:

“(f) Violation of this section or any regulation hereunder is a misdemeanor.”

(3) Section 20 of the Federal Deposit Insurance Act (12 U.S.C. 1829a), is amended by adding at the end thereof the following new subsection:

“(f) Violation of this section or any regulation hereunder is a misdemeanor.”

(4) Section 410 of the National Housing Act (12 U.S.C. 1730c), is amended by adding at the end thereof the following new subsection:

“(f) Violation of this section or any regulation hereunder is a misdemeanor.”

SEC. 313. (a) This section may be cited as the “Miscellaneous Banking Crimes Act of 1973”.

(b) Whoever, being an officer, director or employee of a bank which is a member of the Federal Reserve System or the deposits of which are insured by the Federal Deposit Insurance Corporation, or of any

1 National Agricultural Credit Corporation, or of any land bank, Fed-
2 eral land bank association or other institution subject to examination
3 by a farm credit examiner, or of any small business investment com-
4 pany, makes or grants any loan or gratuity, to any examiner or assist-
5 ant examiner who examines such bank, corporation, or institution,
6 shall be guilty of a Class E felony, except that a fine of a sum equal
7 to the money so loaned or gratuity given may also be imposed.

8 The provisions of this subsection and of chapter 95, title 5, United
9 States Code, shall apply to all public examiners and assistant examiners
10 who examine member banks of the Federal Reserve System or
11 insured banks, or National Agricultural Credit Corporations, whether
12 appointed by the Comptroller of the Currency, by the Board of
13 Governors of the Federal Reserve System, by a Federal Reserve
14 Agent, by a Federal Reserve bank or by the Federal Deposit Insur-
15 ance Corporation, or appointed or elected under the laws of any
16 state; but shall not apply to private examiners or assistant examiners
17 employed only by a clearinghouse association or by the directors of a
18 bank.

19 (c) Whoever, being an examiner or assistant examiner of member
20 banks of the Federal Reserve System or banks the deposits of which
21 are insured by the Federal Deposit Insurance Corporation or farm
22 credit examiner or examiner of National Agricultural Credit Corpo-
23 rations, or an examiner of small business investment companies, accepts
24 a loan or gratuity from any bank, corporation, association or organiza-
25 tion examined by him or from any person connected therewith, shall
26 be guilty of a Class E felony, except that a fine of a sum equal to the
27 money so loaned or gratuity given may also be imposed.

28 (d) Whoever stipulates for or gives or receives, or consents or agrees
29 to give or receive, any fee, commission, bonus, or thing of value for
30 procuring or endeavoring to procure from any Federal Reserve bank
31 any advance, loan, or extension of credit or discount or purchase of
32 any commitment with respect thereto, either directly from such Fed-
33 eral Reserve bank or indirectly through any financing institution,
34 unless such fee, commission, bonus, or thing of value and all material
35 facts with respect to the arrangement or understanding therefor shall
36 be disclosed in writing in the application or request for such advance,
37 loan, extension of credit, discount, purchase, or commitment, shall be
38 guilty of a Class E felony.

39 (e) Whoever mutilates, cuts, defaces, disfigures, or perforates, or
40 unites or cements together, or does any other thing to any bank bill,

1 draft, note, or other evidence of debt issued by any national banking
2 association, or Federal Reserve bank, or the Federal Reserve System,
3 with intent to render such bank bill, draft note, or other evidence of
4 debt unfit to be reissued, shall be guilty of a misdemeanor, except that
5 the maximum fine shall be \$100.

6 (f) Whoever, not being an authorized depository of public moneys,
7 knowingly receives from any disbursing officer, or collector of internal
8 revenue, or other agent of the United States, any public money on de-
9 posit, or by way of loan or accommodation, with or without interest, or
10 otherwise than in payment of a debt against the United States, or uses,
11 transfers, or applies any portion of the public money for any purpose
12 not prescribed by law shall be guilty of a regulatory offense under sec-
13 tion 2-8F6 of title 18, United States Code.

14 (g) Whoever, being an officer, director, agent, or employee of any
15 Federal Reserve bank or member bank of the Federal Reserve System,
16 certifies a check before the amount thereof has been regularly de-
17 posited in the bank by the drawer thereof, or resorts to any device,
18 or receives any fictitious obligation, directly or collaterally, in order
19 to evade any of the provisions of law relating to certification of checks,
20 shall be guilty of a Class E felony, except that the maximum fine shall
21 be \$5,000.

22 (h) Whoever, being an officer, director, agent or employee of any
23 Federal Reserve bank, member bank, national bank or insured bank,
24 without authority from the directors of such bank, issues or puts in
25 circulation any notes of such bank; or

26 Whoever, without such authority, makes, draws, issues, puts forth,
27 or assigns any certificate of deposit, draft, order, bill of exchange,
28 acceptance, note debenture, bond, or other obligation, or mortgage,
29 judgment or decree; or

30 Whoever knowingly makes any false entry in any book, report, or
31 statement of such bank—

32 Shall be guilty of a Class E felony, except that the maximum fine
33 shall be \$5,000.

34 As used in this subsection, the term “national bank” is synonymous
35 with “national banking association”; “member bank” means and in-
36 cludes any national bank, state bank, or bank or trust company which
37 has become a member of one of the Federal Reserve banks; and “in-
38 sured bank” includes any state bank, banking association, trust com-
39 pany, savings bank, or other banking institution, the deposits of which
40 are insured by the Federal Deposit Insurance Corporation.

1 (i) Whoever, being an officer, agent or employee of or connected in
2 any capacity with the Reconstruction Finance Corporation, Federal
3 Deposit Insurance Corporation, National Credit Union Administra-
4 tion, Home Owners' Loan Corporation, Farm Credit Administration,
5 Department of Housing and Urban Development, Federal Crop In-
6 surance Corporation, Farmers' Home Corporation, the Secretary of
7 Agriculture acting through the Farmers' Home Administration, or
8 any land bank, intermediate credit bank, bank for cooperatives or any
9 lending, mortgage, insurance, credit or savings and loan corporation
10 or association authorized or acting under the laws of the United States
11 or any institution the accounts of which are insured by the Federal
12 Savings and Loan Insurance Corporation, or by the Administrator of
13 the National Credit Union Administration or any small business in-
14 vestment company, with intent to defraud any such institution or any
15 other company, body politic or corporate, or any individual, or to
16 deceive any officer, auditor, examiner or agent of any such institution
17 or of any department or agency of the United States, makes any false
18 entry in any book, report or statement of or to any such institution, or
19 without being duly authorized, draws any order or bill of exchange,
20 makes any acceptance, or issues, puts forth or assigns any note, debenture,
21 bond or other obligation, or draft, bill of exchange, mortgage,
22 judgment, of decree, or, with intent to defraud the United States or
23 any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly
24 or indirectly any money, profit, property, or benefits through any
25 transaction, loan, commission, contract, or any other act of any such
26 corporation, institution, or association, shall be guilty of a Class D
27 felony, except that the maximum fine shall be \$10,000.

29 (j) Whoever knowingly makes, circulates, or transmits to another or
30 others any statement or rumor, written, printed or by word of mouth,
31 which is untrue in fact and is directly or by inference derogatory to
32 the financial condition or affects the solvency or financial standing of
33 the Federal Savings and Loan Insurance Corporation, shall be guilty
34 of a Class E felony.

35 (k) No examiner, public or private, shall disclose the names of
36 borrowers or the collateral for loans of any member bank of the
37 Federal Reserve System, or bank insured by the Federal Deposit
38 Insurance Corporation, examined by him, to other than the proper
39 officers of such bank, without first having obtained the express per-
40 mission in writing from the Comptroller of the Currency as to a

1 national bank, the Board of Governors of the Federal Reserve System
2 as to a State member bank, or the Federal Deposit Insurance Corpora-
3 tion as to any other insured bank, or from the board of directors of
4 such bank, except when ordered to do so by a court of competent
5 jurisdiction, or by direction of the Congress of the United States,
6 or either House thereof, or any committee of Congress of either
7 House duly authorized.

8 (1) No farm credit examiner or any examiner, public or private,
9 shall disclose the names of borrowers of any Federal land bank associ-
10 ation, Federal land bank, or joint-stock land bank, or any organization
11 examined by him under the provisions of law relating to Federal in-
12 termediate credit banks, to other than the proper officers of such
13 institution or organization, without first having obtained express
14 permission in writing from the Land Bank Commissioner or from
15 the board of directors of such institution or organization, except when
16 ordered to do so by a court of competent jurisdiction or by direction
17 of the Congress of the United States or either House thereof, or any
18 committee of Congress of either House duly authorized. Any person
19 who violates this subsection shall be subject to disqualification under
20 section 1-4A3 of title 18, United States Code.

21 (m) No examiner appointed under the provisions of law relating
22 to National Agricultural Credit Corporations, shall disclose the names
23 of borrowers of any organization examined by him, to other than the
24 proper officers of such organization, without first having obtained
25 express permission in writing from the Comptroller of the Currency
26 or from the board of directors of such organization, except when
27 ordered to do so by a court of competent jurisdiction or by direction of
28 the Congress of the United States or either House thereof, or any com-
29 mittee of Congress of either House duly authorized. Any person who
30 violates this subsection shall be subject to disqualification under section
31 1-4A3 of title 18, United States Code.

32 (n) Whoever, being a national-bank examiner, Federal Deposit
33 Insurance Corporation examiner, farm credit examiner, or an examiner
34 of National Agricultural Credit Corporations, performs any other
35 service, for compensation, for any bank or banking or loan association,
36 or for any officer, director, or employee thereof, or for any person con-
37 nected therewith in any capacity or for any other person or organiza-
38 tion, except as may be permissible under regulations issued by the
39 agency employing such examiner, shall be guilty of a Class E felony,
40 except that the maximum fine shall be \$5,000.

PART J—TITLE 13, U.S.C., AMENDMENTS

SEC. 314. (a) Section 211 of title 13, United States Code, is repealed.

(b) Section 212 of title 13, United States Code, is amended by deleting “fined not more than \$500” and inserting in lieu thereof “guilty of a violation, except that the maximum fine shall be \$500”.

(c) Section 213 of title 13, United States Code, is repealed.

(d) Section 214 of title 13, United States Code, is amended (1) by deleting “Whoever, being an employee referred to in subchapter II of chapter 1 of this title, having taken and subscribed the oath of office, publishes or communicates,” and inserting in lieu thereof “No employee referred to in subchapter II of chapter 1 of this title, having taken and subscribed the oath of office, shall publish or communicate,” and (2) by deleting “shall be fined not more than \$1,000 or imprisoned not more than two years, or both.” and inserting in lieu thereof a period and the following: “Any violation of this section shall be punished in accordance with section 2-6F1 of title 18, United States Code.”

(e) Subsection (a) of section 221 of title 13, United States Code, is amended (1) by deleting “(a)” immediately preceding the text of such subsection, and (2) by deleting “fined not more than \$100 or imprisoned not more than sixty days, or both” and inserting in lieu thereof “guilty of a misdemeanor, except that the maximum fine shall be \$100 and the maximum prison term shall be sixty days”.

(f) Subsection (b) of section 221 of title 13, United States Code, is repealed.

(g) Section 222 of title 13, United States Code, is amended by deleting “fined not more than \$1,000 or imprisoned not more than one year, or both” and inserting in lieu thereof “guilty of a Class E felony.”

(h) Section 223 of title 13, United States Code, is amended by deleting “fined not more than \$500” and inserting in lieu thereof guilty of a violation, except that the maximum fine shall be \$500”.

(i) Section 224 of title 13, United States Code, is amended by deleting “fined not more than \$500 or imprisoned not more than sixty days, or both; and if he willfully gives a false answer to any such question, he shall be fined not more than \$10,000 or imprisoned not more than one year, or both” and inserting in lieu thereof the following: guilty of a misdemeanor, except that the maximum fine be \$500 and the maximum prison term shall be sixty days”.

(j) Section 225 of title 13, United States Code is amended to read as follows:

1 “Sec. 225. (a) In connection with any survey conducted by the
2 Secretary or other authorized officer or employee of the Department
3 of Commerce or bureau or agency thereof pursuant to subchapter IV
4 of chapter 5 of this title, it shall be a defense to any person accused of
5 a violation pursuant to Section 221, 222, 223, or 224, if such person
6 can establish that—

7 “(1) with respect to the answering of questions and furnish-
8 ing of information, such inquiries were not within the scope of the
9 schedules and of the type and character used in connection with
10 the taking of censuses under subchapters I and II of chapter 5
11 of this title;

12 “(2) there has been no publication of a determination, with
13 reasons therefor certified by the Secretary, or by some other au-
14 thorized officer or employee of the Department of Commerce or
15 bureau or agency thereof with the approval of the Secretary, that
16 the information called for is needed to aid or permit the efficient
17 performance of essential governmental functions or services, or
18 has significant application to the needs of the public, business,
19 or industry and is not publicly available from nongovernmental
20 or other governmental sources; or

21 “(3) in the case of any new survey, that the Secretary or other
22 authorized officer or employee of the Department of Commerce
23 or bureau or agency thereof failed to give, within at least thirty
24 days prior to requesting a return, public notice that such survey
25 was under consideration.

26 “(b) In connection with any censuses or surveys or governments pro-
27 vided for by subchapters II and IV of chapter 5 of this title, or other
28 surveys provided for by subchapter IV of such chapter, it shall be a
29 defense to any person accused of a violation pursuant to section 221,
30 222, 223 or 224 of this title, if such person can establish that such cen-
31 suses or surveys are taken more frequently than annually.

32 “(c) In any case in which the doctrine, teaching, or discipline of
33 any religious denomination or church prohibits the disclosure of in-
34 formation relative to membership, such prohibition shall be a defense
35 to any offense charged under this chapter.

36 “(d) The provisions for imprisonment provided by section 221, 222,
37 and 224 of this title shall not apply in connection with any survey
38 conducted pursuant to subchapter II of chapter 3 of this title, or to
39 subchapter IV of chapter 5 of this title.”

PART K—TITLE 14, U.S.C., AMENDMENTS

1 PART K—TITLE 14, U.S.C., AMENDMENTS
2 SEC. 315. (a) Section 83 of title 14, United States Code, is amended
3 by deleting “misdemeanor and shall be fined not more than \$100 for
4 each offense.” and inserting in lieu thereof “regulatory offense under
5 section 2–8F6 of title 18, United States Code, except that the maximum
6 fine shall be \$100 for each offense.”.

7 (b) Section 84 of title 14, United States Code, is amended by de-
8 leting “misdemeanor and shall be fined not more than \$500 for each
9 offense.” and inserting in lieu thereof “regulatory offense under section
10 2–8F6 of title 18, United States Code, except that the maximum fine
11 shall be \$500 for each offense.”.

12 (c) Section 85 of title 14, United States Code, is amended by de-
13 leting “, commits a misdemeanor and shall be punished, upon convic-
14 tion thereof, by a fine of not exceeding \$100 for each day during which
15 such violation continues.” and inserting in lieu thereof “shall be guilty
16 of a regulatory offense under section 2–8F6 of title 18, United States
17 Code, except that the maximum fine shall be \$100 for each day during
18 which such violation continues.”.

19 (d) Section 89 of title 14, United States Code, is amended by de-
20 leting “fine or” whenever it appears therein.

21 (e) Subsection (c) of section 431 of title 14, United States Code, is
22 amended by deleting “misdemeanor, and upon conviction thereof shall,
23 for each and every offense, be fined not exceeding \$500 or be impris-
24 oned not exceeding one year, or both, in the discretion of the court.”
25 and inserting in lieu thereof “Class E felony, except that the maximum
26 fine shall be \$500.”.

27 (f) Subsection (b) of section 638 of title 14, United States Code, is
28 amended by deleting “fined not more than \$5,000, or imprisoned for
29 not more than two years, or both,” and inserting in lieu thereof
30 “guilty of a Class E felony, except that the maximum fine shall be
31 \$5,000.”.

32 (g) Section 639 of title 14, United States Code, is amended by de-
33 leting “fined not more than \$1,000, or imprisoned not more than one
34 year, or both.” and inserting in lieu thereof “guilty of a Class E
35 felony.”.

36 (h) Section 892 of title 14, United States Code, is amended by
37 deleting “fined not more than \$500.” and inserting in lieu thereof
38 “guilty of a violation, except that the maximum fine shall be \$500.”.

PART L—TITLE 15, U.S.C., AMENDMENTS

COMMERCE AND TRADE

SEC. 316. (a) (1) Section 1 of the Act of July 2, 1890 (15 U.S.C. 1) (commonly known as the Sherman Act), is amended to read as follows:

“SEC. 1. Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is declared to be illegal.

“It is an affirmative defense to a prosecution under this Act that contracts or agreements prescribe minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

“If the making of any contract or agreement is an affirmative defense under the preceding paragraph it shall not be an unfair method of competition under section 5 of the Federal Trade Commission Act. The affirmative defense in paragraph 2 of this section shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.

“Every person who shall make any contract or engage in any combination or conspiracy declared by this Act to be illegal shall be guilty of a Class E felony, except that the maximum fine shall be \$50,000.”

(2) Section 2 of such Act is amended by striking out “or attempt to monopolize,”.

(3) Section 2 of such Act is further amended by striking out “punished by fine not exceeding \$50,000, or by imprisonment not exceeding 1 year, or by both said punishments, in the discretion of the court” and inserting in lieu thereof “guilty of a Class E felony, except that the maximum fine shall be \$50,000”.

(4) The second sentence of section 3 of such Act is amended to read as follows: “Every person who shall make any such contract or engage

1 in any such combination or conspiracy shall be guilty of a Class E
2 felony, except that the maximum fine shall be \$50,000."

3 (b) The second sentence of section 73 of the Act of August 27, 1894
4 (15 U.S.C. 8), is amended to read as follows: "Every person who shall
5 be engaged in the importation of goods or any commodity from any
6 foreign country in violation of this section, or who shall combine or
7 conspire with another to violate the same, is guilty of a Class E felony,
8 except that—

9 " (1) the minimum fine shall be \$100 and the maximum fine
10 shall be \$5,000; and

11 " (2) the minimum imprisonment shall be 3 months."

12 (c) The second paragraph of section 3 of the Act of June 19, 1936
13 (15 U.S.C. 13a), (commonly known as the Robinson-Patman Price
14 Discrimination Act) is amended to read as follows:

15 "Any person violating any of the provisions of this Act shall be
16 guilty of a Class E felony, except that the maximum fine shall be
17 \$5,000."

18 (d) (1) The second paragraph of the Act of October 15, 1914 (15
19 U.S.C. 20), is amended to read as follows:

20 "No person shall, directly or indirectly, do anything to prevent any-
21 one from bidding, or shall do any act to prevent free and fair competi-
22 tion among the bidders or those desiring to bid."

23 (2) The fourth paragraph of such Act is amended to read as follows:

24 "Any person who violates this Act is guilty of a Class E felony, ex-
25 cept that the maximum fine against a common carrier shall be \$25,000."

26 (2) Section 14 of such Act is repealed.

27 (e) (1) Section 9 of the Federal Trade Commission Act (15 U.S.C.
28 49), is amended by adding at the end thereof the following new para-
29 graph:

30 "The provisions of section 2-6C2 of title 18, United States Code,
31 shall apply to any violation of the provisions of this section.

32 (2) The first paragraph of section 10 of such Act is repealed.

33 (3) The second paragraph of section 10 of such Act is amended to
34 read as follows:

35 "Any account, record or memorandum kept by a corporation subject
36 to the provisions of this Act is subject to the provisions of section 2-
37 6D3 of title 18, United States Code."

38 (4) Section 14(a) of such Act is amended by striking out "be guilty
39 of a misdemeanor, and upon conviction shall be punished by a fine of
40 not more than \$5,000 or be imprisoned for not more than six months, or
41 by both such fine and imprisonment" and insert in lieu thereof "be

1 guilty of a misdemeanor, except that the maximum fine shall be \$5,000".

2 (5) Section 14(a) of such Act is further amended by striking out
3 "punishment shall be a fine of not more than \$10,000 or by imprison-
4 ment for not more than one year, or by both such fine and imprison-
5 ment" and insert in lieu thereof "shall be guilty of a Class E felony,
6 except that the maximum fine shall be \$10,000".

7 (f) The first paragraph of section 10 of the Wool Products Labeling
8 Act of 1939 (15 U.S.C. 68h), is amended to read as follows:

9 "Sec. 10. Any person who knowingly violates section (3), (5),
10 (8) or (9) of this Act shall be guilty of a Class E felony, except that
11 the maximum fine shall be \$5,000. Nothing herein shall limit other pro-
12 visions of this Act".

13 (g) Section 11(a) of the Fur Products Labeling Act (15 U.S.C. 69i)
14 is amended to read as follows:

15 "(a) Any person who knowingly violates section (3), (6) or 10
16 of this Act shall be guilty of a Class E felony, except that the maxi-
17 mum fine shall be \$5,000."

18 (h) Section 11(a) of the Textile Fiber Products Identification Act
19 (15 U.S.C. 70i), is amended to read as follows:

20 "(a) Any person who knowingly does an act which under section
21 3, 5, 6, 9, or 10 of this Act is declared to be unlawful shall be guilty
22 of a Class E felony, except that the maximum fine shall be \$15,000.
23 Nothing in this section shall limit any other provision of this Act."

24 (i) (1) The second paragraph of section 801 of the Act of Septem-
25 ber 8, 1916 (15 U.S.C. 72), is amended to read as follows:

26 "Any person who violates this section shall be guilty of a Class E
27 felony, except that the maximum fine shall be \$5,000."

28 (2) Section 805 of such Act is amended by striking out "and any
29 person or persons who shall import, or attempt or conspire to import,
30 or be concerned in importing, such article or articles, into the United
31 States contrary to the prohibition in such proclamation, shall be
32 liable to a fine of not less than \$2,000 nor more than \$50,000, or to
33 imprisonment not to exceed two years, or both, in the discretion of
34 the court" and inserting in lieu thereof the following: "and any
35 person who imports any article into the United States contrary to the
36 prohibition in such proclamation shall be guilty of a Class E felony,
37 except that the minimum fine shall be \$2,000 and the maximum fine
38 shall be \$50,000".

39 (3) The second paragraph of section 806 of such Act is amended
40 by striking out "and any person or persons who shall furnish or
41 attempt or conspire to furnish or be concerned in furnishing or in the

1 concealment of furnishing facilities or privileges to ships or persons
2 contrary to the prohibition in such proclamation shall be liable to a
3 fine of not less than \$2,000 nor more than \$50,000 or to imprisonment
4 not to exceed two years, or both, in the discretion of the court” and
5 inserting in lieu thereof “any person who furnishes or is concerned
6 in furnishing or in the concealment of furnishing facilities or
7 privileges to ships or persons contrary to the prohibition in such
8 proclamation shall be guilty of a Class E felony, except that the
9 minimum fine shall be \$2,000 and the maximum fine shall be \$50,000”.

10 (4) The third paragraph of such section 806 is amended by striking
11 out “shall be severally liable to a fine of not less than \$2,000 nor more
12 than \$10,000 or to imprisonment not to exceed two years, or both, and
13 in addition such vessel shall be forfeited to the United States” and
14 inserting in lieu thereof the following: “shall each be guilty of a
15 Class E felony, except that the minimum fine shall be \$2,000 and
16 the maximum fine shall be \$10,000, and in addition such vessel shall
17 be forfeited to the United States”.

18 (j) (1) Section 22 of the Securities Act of 1933 (15 U.S.C. 77v),
19 is amended by adding at the end thereof the following new subsection:

20 “(c) The provisions of section 2-6C2 of title 18, United States
21 Code, shall apply to any violation of the provisions of this section.”

22 (2) The text of section 24 of such Act is amended to read as follows:

23 “SEC. 24. Any person who knowingly violates any provision of
24 this title, or the rules or regulations promulgated by the Commission
25 under authority thereunder, shall be guilty of a regulatory offense un-
26 der section 2-8F6 of title 18, United States Code.”

27 (k) The text of section 325 of the Trust Indenture Act of 1939 (15
28 U.S.C. 77yyy) is amended to read as follows:

29 “SEC. 325. Any person who knowingly violates any provision of
30 this title, except section 321, or any rule, regulation or order there-
31 under shall be guilty of a regulatory offense under section 2-8F6
32 of title 18, United States Code.”

33 (l) (1) Section 15(b) (5) of the Securities Exchange Act of 1934
34 (15 U.S.C. 78o), is amended by striking out “ten years” and inserting
35 in lieu thereof “five years”.

36 (2) Section 15(b) (5) (B) (iv) of such Act is amended by striking
37 out “1341, 1342, or 1343” and inserting in lieu thereof “2-8D3”.

38 (3) Section 15A(b) (9) of such Act is amended by striking out the
39 word “fine” and inserting in lieu thereof the words “civil penalty”.

40 (4) The last sentence of section 21(c) of such Act is amended to
41 read as follows: “The provisions of section 2-6C2 of title 18, United

1 States Code, shall apply to any violation of the provisions of this
2 subsection.”

3 (5) Section 32(a) of such Act is amended to read as follows:

4 “SEC. 32. (a) Any person who knowingly violates any provision
5 of this Act, except section 23, or any rule or regulation thereunder, the
6 violation of which is made unlawful or the observance of which is re-
7 quired under the provisions of this Act, shall be guilty of a regulatory
8 offense under section 2-8F6 of title 18, United States Code. Any ac-
9 count, correspondence, memorandum, book, paper or other record kept
10 or required to be reported under the provisions of this Act, or any
11 rule, regulation or order thereunder, is subject to the provisions of
12 section 2-6D3 of title 18, United States Code.

13 (m) (1) The last sentence of section 18 of the Public Utilities Hold-
14 ing Company Act of 1935 (15 U.S.C. 79r), is amended to read as fol-
15 lows: “The provisions of section 2-6C2 of title 18, United States Code,
16 shall apply to any violation of the provisions of this section.”

17 (2) The text of section 29 of such Act is amended to read as follows:

18 “SEC. 29. Any person who knowingly violates any provision of this
19 Act, except section 22(c), or any rule, regulation or order thereunder
20 (other than an order of the Commission under section 11(b), 11(d),
21 11(e), or 11(f) of this Act), shall be guilty of a regulatory offense un-
22 der section 2-8F6 of title 18, United States Code.”

23 (n) (1) Section 9(a) (1) of the Investment Company Act of 1940
24 (15 U.S.C. 80a-9), is amended by striking out the word “ten” and in-
25 serting in lieu thereof the word “five”.

26 (2) The text of section 34 of such Act is amended to read as follows:

27 “SEC. 34. Any registration, statement, application, report, account,
28 record or other document filed or transmitted pursuant to this Act
29 or the keeping of which is required pursuant to section 31 is subject to
30 the provisions of section 2-6D3 of title 18, United States Code. For the
31 purposes of sections 2-6D2 and 2-6D3 of such title 18, any part of a
32 registration, statement, application, report, account, record or other
33 document filed or transmitted pursuant to this Act or the keeping of
34 which is required pursuant to section 31 of this Act, shall be filed or
35 certified by an accountant or auditor in his capacity as such and shall
36 be deemed to have been made by such accountant or auditor as well
37 as by the person who in fact made the complete document.”

38 (3) Section 37 of such Act is repealed.

39 (4) The last sentence of section 42(c) of such Act is amended to
40 read as follows: “The provisions of section 2-6C2 of title 18, United

1 States Code, shall apply to any violation of the provisions of this
2 section”.

3 (5) The last sentence of section 45 of such Act is amended to read
4 as follows: “It shall be unlawful for any officer or employee of a State
5 to whom any information contained in any document so filed or trans-
6 mitted has been disclosed to disclose such information, to acquire
7 a pecuniary interest in any property transaction or enterprise which
8 may be affected by such information, to speculate or wager on the
9 basis of such information or to aid another to do any of the foregoing
10 if such information is not available to the public”.

11 (6) The text of section 49 of such Act is amended to read as follows:

12 “SEC. 49. Any person who violates any provision of this Act or any
13 rule, regulation or order hereunder shall be guilty of a regulatory
14 offense under section 2-8F6 of title 18, United States Code. Any regis-
15 tration, statement, application, report, account, record or other docu-
16 ment filed or transmitted pursuant to this Act, or the keeping of
17 which is required pursuant to section 31 of this Act, is subject to
18 the provisions of section 2-6D3 of title 18, United States Code.”

19 (o) (1) Section 203 (e) (2) of the Investment Advisers Act of 1940
20 (15 U.S.C. 80b-3), is amended by striking out the word “ten” and
21 inserting in lieu thereof the word “five”.

22 (2) Section 203 (e) (2) (D) of such Act is amended by striking out
23 “1341, 1342 or 1343” and inserting in lieu thereof “2-8D3”.

24 (3) The last sentence of section 209 (c) of such Act is amended to
25 read as follows: “The provisions of section 2-6C2 of title 18, United
26 States Code, shall apply to any violation of the provisions of this
27 section”.

28 (4) The text of section 217 of such Act is amended to read as fol-
29 lows:

30 “SEC. 217. Any person who knowingly violates any provision of
31 this Act, or any rule, regulation or order promulgated by the Com-
32 mission under the authority of this Act, shall be guilty of a regula-
33 tory offense under section 2-8F6 of title 18, United States Code.”

34 (p) (1) Section 15(b) of the China Trade Act, 1922 (15 U.S.C.
35 155 (b)), is amended by inserting “(1)” immediately after the sub-
36 section designation and by inserting at the end thereof the following
37 new paragraph:

38 “(21) The provisions of section 2-6C2 of title 18, United States
39 Code, shall apply to any violation of the provisions of this section”.

40 (2) The last sentence of section 18 of such Act is amended to read
41 as follows:

1 “Any person who violates any provision of this section shall be
2 guilty of a Class E felony, except that the maximum fine shall be
3 \$5,000.”

4 (3) The second sentence of section 19 of such Act is amended to read
5 as follows: “Any person violating this section shall be guilty of a mis-
6 demeanor, except that there shall be no term of imprisonment”.

7 (q) (1) Section 2 of the Act of March 4, 1915 (15 U.S.C. 235), is
8 amended by striking out the word “willful” and inserting in lieu there-
9 of the word “knowing”.

10 (2) Such section 2 is further amended by striking out “shall be
11 deemed guilty of a misdemeanor and shall be liable to a fine not to
12 exceed \$500, or imprisonment not to exceed six months, in the court of
13 the United States having jurisdiction” and inserting in lieu thereof
14 “shall be guilty of a misdemeanor, except that the maximum fine shall
15 be \$500”.

16 (r) Section 5 of the Act of August 23, 1916 (15 U.S.C. 231), is
17 amended by striking out “shall be deemed guilty of a misdemeanor and
18 shall be liable to a fine not exceeding \$100” and inserting in lieu there-
19 of “shall be guilty of a regulatory offense under section 2-8F6 of title
20 18, United States Code”.

21 (s) The text of section 2 of the Act of February 21, 1935 (15 U.S.C.
22 293), is amended to read as follows:

23 “SEC. 2. Every person who violates the provisions of this Act shall
24 be guilty of a Class E felony, except that the maximum fine shall be
25 \$5,000”.

26 (t) The first sentence of section 5(a) of the Act of June 13, 1906
27 (15 U.S.C. 298(a)) is amended to read as follows: “Any person being
28 a manufacturer of or a wholesale or retail dealer in gold or silver
29 jewelry, goldware, silver goods, or silverware, who shall know-
30 ingly violate any of the provisions of this Act shall be guilty of a mis-
31 demeanor, except that the maximum fine shall be \$500.”

32 (u) Section 3 of the Act of October 19, 1949 (15 U.S.C. 377), is
33 amended to read as follows “SEC. 3. Whoever violates any provision of
34 this Act shall be guilty of a misdemeanor, except that the maximum
35 penalty shall be \$1,000.”

36 (v) (1) Section 2 [16] (a) of the Small Business Act (15 U.S.C.
37 645(a)), is repealed.

38 Section 2 [16] (b) of such Act is amended to read as fol-
39 lows: “Whoever being connected in any capacity with the administra-
40 tion, invests or speculates, directly or indirectly, in the securities or
41 property of any corporation or who receives loans or other assistance

1 from the administration, shall be guilty of a Class E felony, except
2 that the maximum fine shall be \$10,000."

3 Section 2 [16] (c) of such Act is amended to read as follows:

4 "Whoever, knowingly, defrauds, conceals, removes, disposes of or
5 converts to his own use or that of another any property mortgaged or
6 pledged to, or held by, shall be guilty of a Class E felony, except that
7 the maximum fine shall be \$5,000; but if the value of such property
8 does not exceed \$100 the maximum fine shall be \$1,000."

9 (w) (1) Section 310 (a) of the Small Business Investment Act of
10 1958 (15 U.S.C. 687b (a)), is amended by inserting "(1)" immedi-
11 ately after the subsection designation "(a)" and adding at the end
12 thereof the following new paragraph:

13 "(2) The provisions of section 2-6C2 of title 18, United States
14 Code, shall apply to any violation of the provisions of this section."

15 (2) Section 314 of such Act is amended by inserting at the end
16 thereof the following new sentence: "The provisions of section 1-4A3
17 of title 18, United States Code, shall apply to any disqualification re-
18 quired by the provisions of this subsection."

19 (x) Section 15 of the Commodity Credit Corporation Charter Act
20 (15 U.S.C. 714m), is amended to read as follows:

21 "Larceny Conversion of Property

22 "(a) Whoever knowingly conceals, removes or converts to his
23 own use or that of another any property owned or held by, or mort-
24 gaged, or pledged to, the corporation, or any property mortgaged or
25 pledged as security for any promissory note, or other evidence of in-
26 debtedness, which the corporation has guaranteed or is obligated to
27 purchase upon tender, shall be guilty of a Class E felony.

28 "Exception with Respect to the Standards Applicable

29 "(b) Sections 9113 and 9114 of title 5, United States Code, shall
30 not apply to contracts or agreements of a kind which the corporation
31 may enter into with firms participating in a program of the corpora-
32 tion.

33 "Use of the Words 'Commodity Credit Corporation'

34 "No individual, association, partnership, or corporation shall use
35 the words 'Commodity Credit Corporation' or any combination of the
36 same, as the name or a part thereof under which he or it shall do or
37 purport to do business. Any person violating this prohibition shall be
38 guilty of a Class E felony."

39 (y) Section 6 of the Act of February 28, 1935 (15 U.S.C. 715(e)),
40 commonly known as the Connally Hot Oil Act, is amended to read

1 as follows: "Any person who violates any provision of this Act or any
2 regulation prescribed thereunder shall be guilty of a regulatory offense
3 under section 2-8F6 of title 18, United States Code.

4 (z) (1) The last sentence of section 14(d) of the Natural Gas Act
5 (15 U.S.C. 717m (d)), is amended to read as follows: "The provi-
6 sions of sections 2-6C2 of title 18, United States Code, shall apply
7 to any violation of the provisions of this section."

8 (2) The text of section 21 of the Natural Gas Act is amended to
9 read as follows:

10 "Sec. 21. (a) Except for a violation under sections 8(b) and sec-
11 tion 12, any person who knowingly does or makes or suffers to be done
12 any act, matter, or thing prohibited by this Act or declared to be unlaw-
13 ful by this Act, or who recklessly omits or fails to do any act, matter, or
14 thing required to be done by this Act, or recklessly makes or suffers
15 such omission or failure, shall be guilty of a Class E felony, except that
16 the maximum fine shall be \$5,000.

17 "(b) Any person who violates the provisions of section 21 shall be
18 guilty of a misdemeanor."

19 (4) Section 21(b) of such Act is amended to read as follows:

20 "(b) Any person who knowingly violates any rule, regulation, re-
21 striction, condition or order made or imposed by the commission under
22 authority of this Act, shall be guilty of a regulatory offense under
23 section 2-8F6 of title 18, United States Code."

24 (aa) Section 3 of the Act of March 14, 1944 (15 U.S.C. 1004) is
25 the exemption from toll provided for in this Act or an authorization
26 amended to read as follows: "Whoever secures or attempts to secure
27 referred to in section 2 of this Act, knowing that he is not entitled
28 thereto, shall be guilty of a misdemeanor, except that the maximum
29 fine shall be \$100."

30 (bb) Section 3 of the Act of July 1, 1946 (15 U.S.C. 1007) is amended
31 to read as follows: "Whoever secures or attempts to secure the exemp-
32 tion from toll provided for in this Act or an authorization referred to
33 in section 2 of this Act, knowing that he is not entitled thereto, shall
34 be guilty of a misdemeanor, except that the maximum fine shall be
35 \$100."

36 (cc) Section 5(f) of the Employment Act of 1946 (15 U.S.C.
37 1024(f)) is amended by striking out sections 281, 283 or 284 of Title
38 18" and inserting in lieu thereof the following: "Chapter 91 of title 5".

39 (dd) (1) The first paragraph of section 2 of the Act of January 2,
40 1951 (15 U.S.C. 1172), is repealed.

1 (2) Section 3(e) (2) of such Act is amended to read as follows: “(2)
2 Any records required to be kept under this section are subject to the
3 provisions of section 2-6D3 of title 18, United States Code.”

4 (3) Section 5 of such Act is amended by striking out “section 1151”
5 and inserting in lieu thereof “section 1-1A6”.

6 (4) Section 5 of such Act is further amended by striking out “sec-
7 tion 7” and inserting in lieu thereof “section 1-1A4(63)”.

8 (5) The text of section 6 of such Act is amended to read as follows:

9 “SEC. 6. Whoever violates any of the provisions of section 2, 4, or
10 5 of this Act shall be guilty of a Class E felony, except that the max-
11 imum fine shall be \$5,000.”

12 (ee) (1) Section 4(c) of the Flammable Fabrics Act (15 U.S.C.
13 1193(c)), is amended by striking out “or other matter referred to in
14 section 1905 of title 18” and inserting in lieu thereof “processes, oper-
15 ations, style of work, or apparatus, or to the identity of confidential
16 statistical data, amount or any source of any income, profits, losses,
17 or expenditures of any person, firm, partnership, corporation or
18 association.”.

19 (2) Section 7 of such Act is amended by striking out “fined not more
20 than \$5,000, or by imprisonment of not more than one year, or both in
21 the discretion of the court” and inserting in lieu thereof “guilty of a
22 Class E felony, except that the maximum fine shall be \$5,000”.

23 (3) Section 8(a) of such Act is amended to read as follows: “It
24 shall be a defense to a prosecution under section 7 of this Act for a
25 violation of section 3 of this Act if such persons (1) establishes a
26 guaranty received in good faith signed by and containing the name
27 and address of the person by whom the product, fabric, or related
28 material guaranteed was manufactured or from whom it was received,
29 to the effect that reasonable and representative tests made in accord-
30 ance with standards issued or amended under the provisions of section
31 4 of this Act show that the fabric or related material covered by the
32 guaranty, or used in the product covered by the guaranty, conforms
33 with applicable flammability standards issued or amended under the
34 provisions of section 4 of this Act, and (2) has not, by further process-
35 ing, affected the flammability of the fabric or related material, or pro-
36 duct covered by the guaranty which he received. Such guaranty shall be
37 either (1) a separate guaranty specifically designating the product,
38 fabric, or related material guaranteed, in which case it may be on
39 the invoice or other paper relating to such product, fabric, or related
40 material; (2) a continuing guaranty given by seller to buyer applica-
41 ble to any product, fabric, or related material sold or to be sold to

1 buyer by seller in a form as the Commission by rules and regulations
2 may prescribe; or (3) a continuing guaranty filed with the Commis-
3 sion applicable to any product, fabric, or related material handled by
4 a guarantor, in such form as the Commission by rules or regulations
5 may prescribe."

6 (4) The text of section 11 of such Act is amended to read as follows:

7 SEC. 11. "It shall be a defense to a prosecution under this Act: (a) if
8 a person is a common carrier, contract carrier, or freight forwarder in
9 transporting a product, fabric, or related material shipped or delivered
10 for shipment into commerce in the ordinary course of its business; (b)
11 if a person is a converter, processor, or finisher in performing a con-
12 tract or commission service for the account of a person subject to the
13 provisions of this Act, *Provided*, That said converter, processor or
14 finisher does not cause any product, fabric, or related material to be-
15 come subject to this Act contrary to the terms of the contract or com-
16 mission service; (c) if any product, fabric, or related material is
17 shipped or delivered for shipment into commerce for the purpose of
18 finishing or processing such product, fabric, or related material so that
19 it conforms with applicable flammability standards issued or amended
20 under the provisions of section 4 of this Act."

21 (ff) The text of section 2 of the Act of August 2, 1956 (15 U.S.C.
22 1212), is amended to read as follows:

23 "SEC. 2. Any person who violates the first section of this Act shall
24 be guilty of a Class E felony."

25 (gg) Section 4 of the Automobile Information Disclosure Act (15
26 U.S.C. 1233), is amended to read as follows:

27 "SEC. 4. (a) Any manufacturer of automobiles distributed in com-
28 merce who knowingly fails to affix to any new automobile manu-
29 factured or imported by him the label required by section 3 of this
30 Act shall be fined not more than \$1,000. Such failure with respect to
31 each automobile shall constitute a separate offense.

32 "(b) Any manufacturer of automobiles distributed in commerce
33 who knowingly fails to endorse clearly, distinctly and legibly any
34 label as required by section 3 of this Act, who makes a false endorse-
35 ment of any such label, shall be fined not more than \$1,000. Such fail-
36 ure or false endorsement with respect to each automobile shall consti-
37 tute a separate offense.

38 "(c) Any person who knowingly removes, alters, or renders il-
39 legible any label affixed to a new automobile pursuant to section 3 of
40 this Act or any endorsement thereon, prior to the time that such auto-
41 mobile is delivered to the actual custody and possession of the ulti-

mate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be guilty of a Class E felony. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense."

(hh) (1) Section 2 of the Act of August 12, 1958 (15 U.S.C. 1242), is amended by striking out "shall be fined not more than \$2,000 or imprisoned not more than five years, or both" and inserting in lieu thereof "shall be guilty of a Class D felony, except that the maximum fine shall be \$2,000."

(2) Section 3 of such Act is amended by striking out "Section 1151" and inserting in lieu thereof "section E-1A6".

(3) Section 3 of such Act is further amended by striking out "shall be fined not more than \$2,000 or imprisoned not more than five years, or both" and inserting in lieu thereof "shall be guilty of a Class D felony, except that the maximum fine shall be \$2,000".

(4) (A) The matter preceding paragraph (1) of section 4 of such Act is amended to read as follows: "It shall be a defense to prosecution under this Act if a person is—".

(B) Clause (2) of section 4 of such Act is amended by inserting "is engaged in" immediately after the clause designation.

(C) Clause (3) of section 4 of such Act is amended by striking out "the Armed Forces or any member or employee thereof" and inserting in lieu thereof "is a member or employee of the Armed Forces".

(D) Clause (4) of section 4 of such Act is amended by striking out "the possession and transportation" and inserting in lieu thereof "possesses and transports".

(ii) (1) Section 5 (a) of the Hazardous Substances Act is amended to read as follows:

"SEC. 5. (a) Any person who violates any of the provisions of section 4 of this Act shall be guilty of a misdemeanor, except that the maximum fine shall be \$500 and the maximum imprisonment shall be ninety days. Any person who violates the provisions of section 4 of this Act with the intent to defraud or mislead, or who violates the provisions of such section for a second or subsequent offense shall be guilty of a Class E felony, except that the maximum fine shall be \$3,000."

(2) (A) Section 5 (b) of such Act is amended by striking out "No person shall be subject to the penalty of subsection (a) of this section (1) for having violated section 1263 (c) of this title," and inserting in

1 lieu thereof "It shall be a defense (1) for a prosecution for a violation
2 of section 4 (c) of this Act".

3 (B) Clause (2) of such section is amended by striking out "for
4 having violated section 4(a) of this Act" and inserting in lieu thereof
5 "for prosecution for violation of section 4(a) of this Act".

6 (C) Clause (3) of such section is amended by striking out "for
7 having violated subsection (a) or (c) of section 4 of this Act in re-
8 spect of any hazardous substance" and inserting in lieu thereof "for
9 prosecution for a violation of such subsection (a) or (c) of section 4
10 of this Act if any hazardous substance is".

11 (jj) (1) Section 1 of the Act of September 13, 1961 (15 U.S.C.
12 1281), is repealed.

13 (2) Section 2 of such Act is repealed.

14 (kk) The text of section 9 of the Federal Cigarette Labeling and
15 Advertising Act (15 U.S.C. 1338), is amended to read as follows:

16 "SEC. 9. Any person who violates the provisions of this Act shall
17 be guilty of a Class E felony, except that the maximum fine shall be
18 \$10,000."

19 (ll) (1) Section 112 of the Truth in Lending Act (15 U.S.C. 1611)
20 is amended by striking out "gives false or inaccurate information
21 or".

22 (2) Such section 112 is further amended by striking out "shall
23 be fined not more than \$5,000 or imprisoned not more than one year,
24 or both" and inserting in lieu thereof "shall be guilty of a regulatory
25 offense under section 2-8F6 of title 18, United States Code".

26 (3) Section 304(b) of such Act is amended to read as follows:

27 "(b) Whoever knowingly violates subsection (a) of this section
28 shall be guilty of a Class E felony."

29 (mm) (1) Section 1404(a) (2) of the Interest Land Sales Full Dis-
30 closure Act (15 U.S.C. 1703) is repealed.

31 (2) Section 1415(d) of such Act is amended by adding at the end
32 thereof the following new paragraph:

33 "The provisions of section 2-6C2 of title 18, United States Code,
34 shall apply to any violation of the provisions of this section."

35 (3) Section 1418 of such Act is amended to read as follows:

36 "SEC. 1418. Any person who knowingly violates any of the pro-
37 visions of this Act or the rules or regulations prescribed pursuant
38 thereto shall be guilty of a regulatory offense under section 2-8F6 of
39 title 18, United States Code."

(nn) Section 107(b)(1) of the Motor Vehicle Information and Cost Savings Act (86 Stat. 953) is amended to read as follows:

“(b)(1) Any person who knowingly violates section 106(a)(1) after having received notice of noncompliance from the Secretary shall be guilty of a Class E felony, except that the maximum fine shall be \$50,000.”

(oo) Section 21(a) of the Consumer Product Safety Act (86 Stat. 1225) is amended to read as follows:

“SEC. 21. (a) Any person who knowingly violates section 19 of this Act, after having received notice of noncompliance from the Commission, shall be guilty of a Class E felony, except that the maximum fine shall be \$50,000.”

SEC. 317(a) This section may be cited as the “Miscellaneous Fireworks Crimes Act of 1973.”

(b)(1) Whoever, otherwise than in the course of continuous interstate transportation through any State, transports fireworks into any State, or delivers them for transportation into any State, or attempts so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such State specifically prohibiting or regulating the use of fireworks, shall be guilty of a Class E felony.

(2) It shall be a defense to a prosecution under this subsection, if a common or contract carrier or an international or domestic water carrier engaged in interstate commerce transports fireworks into a State for the use of Federal agencies in the carrying out or the furtherance of their operations.

(3) In the enforcement of this subsection, the definitions of fireworks contained in the laws of the respective States shall be applied.

(4) As used in this subsection, the term “State” includes the several States, Territories, and possessions of the United States, and the District of Columbia.

SEC. 318. (a) This section may be cited as the “Miscellaneous Convict Goods Act of 1972.”

(b)(1) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, shall be guilty of a misdemeanor.

(2) It shall be a defense to a prosecution under this subsection if the agricultural commodities or parts for the repair of farm machinery, or commodities manufactured in a Federal, District of Columbia, or State institution or for use by the Federal Government, or by the District of Columbia, or by any State or political subdivision of a State.

(c) (1) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

(2) Whoever violates this subsection shall be fined not more than \$1,000, and any goods, wares, or merchandise transported in violation of this subsection or subsection (b) of this section shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

SEC. 319. (a) This section may be cited as the "Miscellaneous Denture Crimes Act of 1973."

(b) Whoever transports by mail or otherwise to or within the District of Columbia, the Canal Zone or any Possession of the United States or uses the mails or any instrumentality of interstate commerce for the purpose of sending or bringing into any State or Territory any set of artificial teeth or prosthetic dental appliance or other denture, constructed from any cast or impression made by any person other than, or without the authorization or prescription of, a person licensed to practice dentistry under the laws of the place into which such denture is sent or brought, where such laws prohibit:

(1) the taking of impressions or casts of the human mouth or teeth by a person not licensed under such laws to practice dentistry;

(2) the construction or supply of dentures by a person other than, or without the authorization or prescription of, a person licensed under such laws to practice dentistry; or

1 (3) the construction or supply of dentures from impressions
2 or casts made by a person not licensed under such laws to practice
3 dentistry—

4 Shall be guilty of a Class E felony.

5 SEC. 320. (a) This section may be cited as the “Miscellaneous Weather
6 Forecast Crimes Act of 1973.”

7 (b) Whoever knowingly issues, or publishes any counterfeit weather
8 forecast or warning of weather conditions falsely representing such
9 forecast or warning to have been issued or published by the Weather
10 Bureau, United States Signal Service, or other branch of the Govern-
11 ment service, shall be guilty of a misdemeanor, except that—

12 (1) the maximum fine shall be \$500, and

13 (2) the maximum imprisonment shall be 90 days.

14 SEC. 321. (a) This section may be cited as the Miscellaneous Counter-
15 feited Record Label Crimes Act of 1973.”

16 (b) Whoever knowingly and with fraudulent intent transports,
17 causes to be transported, receives, sells, or offers for sale in interstate
18 or foreign commerce any phonograph record, disk, wire, tape, film,
19 or other article on which sounds are recorded, to which or upon which
20 is stamped, pasted, or affixed any forged or counterfeited label, know-
21 ing the label to have been falsely made, forged, or counterfeited, shall
22 be guilty of a Class E felony.

23 PART M—TITLE 16, U.S.C., AMENDMENTS

24 SEC. 322. (a) Section 3 of the Act of August 25, 1916, ch. 408, as
25 amended (39 Stat. 535, 16 U.S.C. 3), is amended by striking out all
26 in the first sentence after “shall be” and inserting in lieu thereof
27 “a regulatory offense under section 2–8F6 of title 18, United States
28 Code, except that the maximum fine shall be \$500”.

29 (b) The first section of the Act of March 2, 1933, ch. 180, as
30 amended (47 Stat. 1420, 16 U.S.C. 9 (a)), is amended by striking
31 all after “Army;” and inserting in lieu thereof “and any person who
32 knowingly violates any such regulation shall be guilty of a regulatory
33 offense under section 2–8F6 of title 18, United States Code, except that
34 the maximum fine shall be \$100”.

35 (c) Section 4 of the Act of May 7, 1894, as amended (28 Stat. 73,
36 16 U.S.C. 26), is amended as follows:

37 (1) by striking out in the fourth sentence “misdemeanor, and
38 shall be fined for every such offense not exceeding \$300” and
39 inserting in lieu thereof “regulatory offense under section 2–8F6
40 of title 18, United States Code, except that the maximum fine shall
41 be \$300.”; and

(2) by striking out in the fifth sentence of such section "misdemeanor, and shall be subjected to a fine of not more than \$500 or imprisonment not exceeding six months or both, and be adjudged to pay all costs of the proceedings" and inserting in lieu thereof "regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500".

(d) Section 5 of the Act of July 3, 1926, ch. 744, as amended (44 Stat. 820, 16 U.S.C. 45(e)), is amended by striking out "subjected to a fine of not more than \$500 or imprisonment not exceeding six months or both" and inserting in lieu thereof "guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500".

(e) Section 5 of the Act of June 2, 1920, ch. 218 (41 Stat. 732, 16 U.S.C. 63), is amended as follows:

(1) by inserting at the beginning of such section "(a)";

(2) by striking out in the first sentence all after "fish in the said parks," and inserting in lieu thereof the following: "shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."; and

(3) by adding at the end thereof a new subsection (b) as follows—

"(b) Any person who shall, within said parks, commit any damage, injury, or spoliation to or upon any building, fence, hedge, gate, guidepost, tree, wood, underwood, timber, garden, rocks, vegetables, plants, land, springs, mineral deposits, other than those legally located prior to the passage of the respective Acts creating and establishing said parks, natural curiosities, or other matter or things growing or being thereon, or situated therein, shall be deemed guilty of malicious mischief under section 2-8B6 of title 18, United States Code."

(f) Section 4 of the Act of June 30, 1916, ch. 197 (39 Stat. 244, 16 U.S.C. 98), is amended as follows:

(1) by inserting at the beginning of such section "(a)";

(2) by striking out in the fourth sentence all after "fish in the park," and inserting in lieu thereof the following: "shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500."; and

"(3) by adding at the end thereof a new subsection (b) as follows:

"(b) Any person who shall, within said park, commit any damage, injury or spoliation to or upon any building, fence, hedge, gate, guide-

1 post, tree, wood, underwood, timber, garden, crops, vegetables, plants,
2 land, springs, mineral deposits, other than those legally located prior
3 to May 27, 1908, natural curiosities or other matter or things growing
4 or being thereon or situated therein, shall be deemed guilty of mali-
5 cious mischief under section 2-8B6 of title 18, United States Code, ex-
6 cept that the maximum fine shall be \$500.”.

7 (g) Section 4 of the Act of June 29, 1906, ch. 3607 (34 Stat. 617,
8 16 U.S.C. 114), is amended to read as follows:

9 “SEC. 4. Any person convicted of having in any manner recklessly
10 removed, disturbed, destroyed, or molested any of the ruins, moun-
11 tains, buildings, graves, relics, or other evidences of an ancient civil-
12 ization or other property from said park shall be required to restore
13 the property disturbed, if such restoration is possible.”.

14 (h) Section 4 of the Act of April 25, 1928, ch. 434 (45 Stat. 459,
15 16 U.S.C. 117c), is amended as follows:

16 (1) by inserting at the beginning of such section “(a)”;

17 (2) by striking out in the fourth sentence all after “or fish in
18 the park,” and inserting in lieu thereof the following: “shall be
19 guilty of a regulatory offense under section 2-8F6 of title 18,
20 United States Code, except that the maximum fine shall be
21 \$1,000.”; and

22 (3) by adding at the end thereof new subsections (b) and (c)
23 as follows:

24 “(b) Any person who shall within said park commit any damage,
25 injury, or spoliation to or upon any building, fence, hedge, gate, guide-
26 post, tree, wood, underwood, timber, garden crops, vegetables, plants,
27 land, springs, natural curiosities, or other matter or thing growing or
28 being thereon or situated therein shall be deemed to be guilty of mali-
29 cious mischief under section 2-8B6 of title 18, United States Code,
30 except that the maximum fine shall be \$1,000.

31 “(c) Any person convicted of having in any manner recklessly re-
32 moved, disturbed, destroyed, or molested any of the ruins, mountains,
33 buildings, graves, relics, or other evidences of an ancient civilization or
34 other property from said park shall be required to restore the property
35 disturbed, if such restoration is possible.”.

36 (i) Section 3 of the Act entitled, “An Act reserving from the public
37 lands in the State of Oregon, as a public park for the benefit of the
38 people of the United States, and for the protection and preservation
39 of the game, fish, timber, and all other natural objects therein, a tract
40 of land herein described, and so forth”, approved May 22, 1902, ch.
41 820 (37 Stat. 203, 16 U.S.C. 123), is amended by striking out “punished

1 by a fine of not more than \$500, or by imprisonment for not more than
2 one year” and inserting in lieu thereof the following: “guilty of a
3 regulatory offense under section 2-8F6 of title 18, United States Code,
4 except that the maximum fine shall be \$500.”

5 (j) Section 4 of the Act of August 21, 1916, ch. 368 (39 Stat. 522,
6 16 U.S.C. 127), is amended as follows:

7 (1) by inserting at the beginning of such section “(a)”;

8 (2) by striking out in the fourth sentence all after “or fish in
9 the park,” and inserting in lieu thereof the following: “shall be
10 guilty of a regulatory offense under section 2-8F6 of title 18,
11 United States Code, except that the maximum fine shall be \$500.”;

12 (3) by adding at the end thereof a new subsection (b) as
13 follows:

14 “(b) Any person who shall within said park commit any damage,
15 injury, or spoliation to or upon any building, fence, hedge, gate, guide-
16 post, tree, wood, underwood, timber, garden, crops, vegetables, plants,
17 land, springs, mineral deposits other than those legally located prior
18 to August 21, 1916, natural curiosities, or other matter or thing grow-
19 ing or being thereon or situated therein, shall be deemed guilty of
20 malicious mischief under section 2-8B6 of title 18, United States Code,
21 except that the maximum fine shall be \$500.”

22 (k) Section 6 of the Act of January 9, 1903, ch. 63 (32 Stat. 766,
23 16 U.S.C. 146), is amended by striking out “who shall unlawfully in-
24 trude upon said park, or who shall without permission appropriate
25 any object therein or commit unauthorized injury or waste in any
26 form whatever upon the lands or other public property therein, or”.

27 (l) The last sentence of section 18 of the Act of April 21, 1904, ch.
28 1402, as amended (33 Stat. 220, 16 U.S.C. 152), is amended as follows:

29 (1) by striking out “corporation” and “corporation or members
30 or agents thereof,”; and

31 (2) by striking out “fined not less than \$5 and not more than
32 \$100, and may be imprisoned for a term of not more than six
33 months for each offense” and inserting in lieu thereof the follow-
34 ing: “guilty of a regulatory offense under section 2-8F6 of title 18,
35 United States Code, except that the maximum fine shall be \$100”.

36 (m) Section 4 of the Act of August 22, 1914, ch. 264, as amended (38
37 Stat. 700, 16 U.S.C. 170), is amended as follows:

38 (1) by inserting at the beginning of such section “(a)”;

39 (2) by striking out in the fifth sentence all after “or fish in the
40 park,” and inserting in lieu thereof the following: “shall be
41 guilty of a regulatory offense under section 2-8F6 of title 18,

1 United States Code, except that the maximum fine shall be \$500”;
2 and

3 (3) by adding at the end thereof a new subsection (b) as
4 follows:

5 “(b) Any person who shall within said park commit any damage, in-
6 jury, or spoliation to or upon any building, fence, hedge, gate, guide-
7 post, tree, wood, underwood, timber, garden, crops, vegetables, plants,
8 land, springs, mineral deposits other than those legally located prior
9 to May 11, 1910, natural curiosities, or other matter or thing growing
10 or being thereon, or situated therein, shall be deemed to be guilty of
11 malicious mischief under section 2-8B6 of title 18, United States Code,
12 except that the maximum fine shall be \$500.”

13 (n) Section 4 of the Act of March 2, 1929, ch. 583 (45 Stat. 1537, 16
14 U.S.C. 198c), and section 3 of the Act of March 6, 1942, ch. 151 (56 Stat.
15 136, 16 U.S.C. 256b), are amended as follows:

16 (1) by inserting at the beginning of each such section “(a)”;

17 (2) by striking out in the fourth sentence of each such section
18 all after “or fish in the park,” and inserting in lieu thereof the
19 following: “shall be guilty of a regulatory offense under section
20 2-8F6 of title 18, United States Code, except that the maximum
21 fine shall be \$500.”; and

22 (3) by adding at the end of each such section a new subsection
23 (b) as follows:

24 “(b) Any person who shall within said park commit any damage,
25 injury, or spoliation to or upon any building, fence, hedge, gate,
26 guidepost, tree, springs, natural curiosities, or other matter or thing
27 growing or being thereon or situated therein, shall be deemed to be
28 guilty of malicious mischief under section 2-8B6 of title 18, United
29 States Code, except that the maximum fine shall be \$500.”

30 (o) Section 4 of the Act of April 26, 1928, ch. 438 (45 Stat. 463, 16
31 U.S.C. 204c), is amended as follows:

32 (1) by inserting at the beginning of such section “(a)”;

33 (2) by striking out in the fourth sentence all after “or fish in
34 the said park,” and inserting in lieu thereof the following: “shall
35 be guilty of a regulatory offense under section 2-8F6 of title 18,
36 United States Code, except that the maximum fine shall be \$500.”;
37 and

38 (3) by adding a new subsection (b) as follows:

39 “(b) Any person who shall within said park commit any damage,
40 injury, or spoliation to or upon any building, fence, hedge, gate,
41 guidepost, tree, wood, underwood, timber, garden, crops, vegetables,

1 plants, land, springs, mineral deposits other than those legally located
2 prior to August 9, 1916, creating and establishing said park, natural
3 curiosities, or other matter or thing growing or being thereon or situ-
4 ated therein, shall be deemed guilty of malicious mischief under sec-
5 tion 2-8B6 of title 18, United States Code, except that the maximum
6 fine shall be \$500."

7 (p) Section 8 of the Act of February 26, 1917, ch. 121 (39 Stat. 939,
8 16 U.S.C. 354), is amended to read as follows:

9 "SEC. 8. Any person found guilty of violating any of the provisions
10 of this Act shall be guilty of a regulatory offense under section 2-8F6
11 of title 18, United States Code, except that the maximum fine shall
12 be \$500."

13 (q) The Act of March 3, 1891, ch. 533, as amended (26 Stat. 843, 16
14 U.S.C. 363 and 364), is amended as follows:

15 (1) by striking out in the first sentence of section 3, "and to
16 provide penalties for the violation of any regulation which may
17 be enforced as though provided by Act of Congress";

18 (2) by adding at the end of such section 3, a new sentence as
19 follows: "Any person who shall violate a rule or regulation pro-
20 mulgated under this section shall be guilty of a regulatory of-
21 fense under section 2-8F6 of title 18, United States Code."; and

22 (3) by striking out in section 4, "and any such person making
23 a false oath or affidavit in the premises shall be guilty of perjury,
24 and, upon conviction, subject to all the pains and penalties of
25 perjury under the statutes of the United States;"

26 (r) The Act of March 2, 1911, ch. 200, as amended (36 Stat. 1015,
27 16 U.S.C. 371), is amended by striking out "and any person desir-
28 ing to bathe at the free bathhouse on the Hot Springs National Park
29 making a false oath as to his financial condition shall be deemed
30 guilty of a misdemeanor and upon conviction thereof shall be fined
31 not less than \$25 nor more than \$300 and be imprisoned for not more
32 than sixty days."

33 (s) The Act of April 20, 1904, ch. 1400, as amended (33 Stat. 187
34 and 188, 16 U.S.C. 373 and 374) is amended as follows:

35 (1) by striking out in section 3 "guilty of a misdemeanor, and,
36 upon conviction thereof, shall be subject to a fine of not more than
37 \$100" and inserting in lieu thereof "deemed guilty of malicious
38 mischief under section 2-8B6 of title 18, United States Code,
39 except that the maximum fine shall be \$100"; and

40 (2) by amending the first sentence of section 4 to read as fol-
41 lows: "Any person who shall, except in compliance with such

1 rules and regulations as the Secretary of the Interior may deem
2 necessary, enter upon said tract, take, use, bathe in water of any
3 spring located thereon, or without presenting satisfactory evi-
4 dence that he (provided he is under medical treatment) is the
5 patient of a physician registered at the office of the Superintend-
6 ent of the Hot Springs National Park as one qualified, under
7 such rules which the Secretary of the Interior may have made
8 or shall make, to prescribe the waters of the Hot Springs, shall
9 be guilty of a regulatory offense under section 2-8F6 of title 18,
10 United States Code, except that the maximum fine shall be \$100.”.

11 (t) Section 4 of the Act of April 19, 1930, ch. 200 (46 Stat. 227, 16
12 U.S.C. 395c), is amended as follows:

13 (1) by inserting at the beginning of such section “(a)”;
14 (2) by striking out in the fourth sentence all after “or fish in
15 the park,” and inserting in lieu thereof the following: “shall be
16 guilty of a regulatory offense under section 2-8F6 of title 18,
17 United States Code, except that the maximum fine shall be \$500.”;
18 and

19 (3) by adding at the end thereof a new subsection (b) as
20 follows:

21 “(b) Any person who shall within said park recklessly commit
22 any damage, injury, or spoliation to or upon any building, fence,
23 hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops,
24 vegetables, plants, land, springs, natural curiosities, or other matter
25 or thing growing or being thereon or situated therein, shall be deemed
26 guilty of malicious mischief under section 2-8B6 of title 18, United
27 States Code, except that the maximum fine shall be \$500.”

28 (u) Section 3 of the Act of August 19, 1937 (50 Stat. 701, 16
29 U.S.C. 403c-3), is amended as follows:

30 (1) by inserting at the beginning of such section “(a)”;
31 (2) by striking out in the fourth sentence all after “or fish in
32 the said park,” and inserting in lieu thereof the following: “shall
33 be guilty of a regulatory offense under section 2-8F6 of title 18,
34 United States Code, except that the maximum fine shall be \$500.”;
35 and

36 (3) by adding at the end thereof a new subsection (b) as
37 follows:

38 “(b) Any person who shall within said park commit any damage,
39 injury or spoliation to or upon any building, fence, sign, hedge, gate,
40 guidepost, land, springs, mineral deposits, natural curiosities, or other
41 matter or thing growing or being thereon, or situated therein, shall

1 be deemed guilty of malicious mischief under section 2-8B6 of title
2 18, United States Code, except that the maximum fine shall be \$500.”.

3 (v) Section 3 of the Act of April 29, 1942, ch. 264 (56 Stat. 259,
4 16 U.S.C. 403h-3), is amended as follows:

5 (1) by inserting at the beginning of such section “(a)”;

6 (2) by striking out in the third sentence “violating this Act”
7 and inserting in lieu thereof “violating this section”;

8 (3) by striking out in the fourth sentence all after “and fish
9 in said park,” and inserting in lieu thereof the following: “shall
10 be guilty of a regulatory offense under section 2-8F6 of title 18,
11 United States Code, except that the maximum fine shall be \$500.”;
12 and

13 (4) by adding at the end thereof a new subsection (b) as
14 follows:

15 “(b) Any person who shall within said park commit any damage,
16 injury, or spoliation to or upon any building, fence, sign, hedge, gate,
17 guidepost, tree, wood, underwood, timber, garden, crops, vegetables,
18 plants, land, springs, mineral deposits, natural curiosities, or other
19 matter or thing growing or being thereon, or situated therein, shall
20 be deemed guilty of malicious mischief under section 2-8B6 of title
21 18, United States Code, except that the maximum fine shall be \$500.”.

22 (w) Section 3 of the Act of June 5, 1942, ch. 341 (56 Stat. 317,
23 16 U.S.C. 404c-3), is amended as follows:

24 (1) by inserting at the beginning of such section “(a)”;

25 (2) by striking out in the third sentence “violating this Act”
26 and inserting in lieu thereof “violating this section”;

27 (3) by striking out in the fourth sentence all after “and fish
28 in the park,” and inserting in lieu thereof the following: “shall
29 be guilty of a regulatory offense under section 2-8F6 of title 18,
30 United States Code, except that the maximum fine shall be \$500.”;
31 and

32 (4) by adding at the end thereof a new subsection (b) as
33 follows:

34 “(b) Any person who shall within the park commit any damage,
35 injury, or spoliation to or upon any building, fence, sign, hedge, gate,
36 guidepost, tree, wood, underwood, timber, garden, crops, vegetables,
37 plants, land, springs, mineral deposits, natural curiosities, or other
38 matter or thing growing or being thereon, or situated therein, shall
39 be deemed guilty of malicious mischief under section 2-8B6 of title 18,
40 United States Code, except that the maximum fine shall be \$500.”.

(x) Section 3 of the Act of March 6, 1942, ch. 150 (56 Stat. 133, 16 U.S.C. 408k), is amended as follows:

(1) by inserting at the beginning of such section "(a)";

(2) by striking out in the third sentence "violating this Act" and inserting in lieu thereof "violating this section";

(3) by striking out in the fourth sentence all after "and fish in said park," and inserting in lieu thereof the following: "shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500,"; and

(4) by adding at the end thereof a new subsection (b) as follows:

"(b) Any person who shall within said park commit any damage, injury, or spoliation to or upon any building, fence, sign, hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops, vegetables, plants, land, springs, mineral deposits, natural curiosities, or other matter or thing growing or being thereon, or situated therein, shall be deemed guilty of malicious mischief under section 2-8B6 of title 18, United States Code, except that the maximum fine shall be \$500."

(y) The Act of March 3, 1897, ch. 372 (29 Stat. 621 and 622; 16 U.S.C. 413 and 414), is amended as follows—

(1) section 2 is amended to read as follows:

"SEC. 2. Every person who, knowing that he is not licensed or privileged to do so, shall:

"(1) trespass upon any national military parks for the purpose of hunting or shooting;

"(2) hunt any kind of game thereon with gun or dog; or

"(3) set trap or net or other device whatsoever thereon for the purpose of hunting or catching game of any kind

shall be guilty of a violation, except that the maximum fine shall be \$1,000," and

(2) the first section of such Act is repealed.

(z) Section 5 of the Act of June 2, 1921, ch. 448, as amended (44 Stat. 686; 16 U.S.C. 422d), is amended by striking out "fine" and "fines" and inserting in lieu thereof "civil penalty" and "civil penalties".

(aa) The first section of the Act of July 3, 1926, ch. 746, as amended (44 Stat. 822; 16 U.S.C. 423f), and section 8 of the Act of February 14, 1927, ch. 127, as amended (44 Stat. 1094; 16 U.S.C. 425g), are amended by striking out in each such section the word "fine" and inserting in lieu thereof "civil penalty".

1 (bb) Section 10 of the Act of March 3, 1927, ch. 374, as amended
2 (44 Stat. 1401; 16 U.S.C. 426i), and section 10 of the Act of March
3 26, 1928, ch. 248, as amended (45 Stat. 368; 16 U.S.C. 428i), are
4 amended by striking out in each such section all after “so offending
5 shall” and inserting in lieu thereof “, for each violation incur a civil
6 penalty of not less than \$5 and not more than \$100.”.

7 (cc) The second sentence of section 3(b) of the Act of June 26,
8 1935, ch. 315 (49 Stat. 423; 16 U.S.C. 430v), is amended to read as
9 follows: “Any person violating such regulations shall be guilty of a
10 regulatory offense under section 2–8F6 of title 18, United States Code,
11 except that the maximum fine shall be \$500.”.

12 (dd) The first section of the Act of June 8, 1906, ch. 3060 (34 Stat.
13 225; 16 U.S.C. 433), is amended by striking out all after the enacting
14 clause and inserting in lieu thereof the following: “That, any person
15 who shall recklessly excavate any historic or prehistoric ruin or
16 monument, or any object of antiquity, situated on lands owned or
17 controlled by the Government of the United States, without permis-
18 sion of the Secretary of the Department of the Government having
19 jurisdiction over the lands on which such antiquities are situated
20 shall be guilty of a misdemeanor, except that the maximum prison
21 term shall be 90 days and the maximum fine shall be \$500.”.

22 (ee) The third sentence of section 4 of the Act of September 28,
23 1962 (76 Stat. 654; 16 U.S.C. 460k–3), is amended by striking out all
24 after “shall be” and inserting in lieu thereof “guilty of a regulatory
25 offense under section 2–8F6 of title 18, United States Code, except that
26 the maximum fine shall be \$500.”.

27 (ff) The fourth sentence of section 6 of the Act of October 8, 1964
28 (78 Stat. 654; 16 U.S.C. 460n–5), is amended by striking out all after
29 “Act” and inserting in lieu thereof “shall be guilty of a regulatory
30 offense under section 2–8F6 of title 18, United States Code, except that
31 the maximum fine shall be “\$500.”.

32 (gg) The second paragraph of section 9 of the Act of October 6,
33 1964 (78 Stat. 1041; 16 U.S.C. 460n–8), is amended to read as follows:

34 “The functions of such magistrate shall include the trial and sen-
35 tencing of persons committing misdemeanors, violations, and regula-
36 tory offenses. The magistrate shall act in accordance with the rules
37 prescribed by the Supreme Court under section 3–11A1 of title 18,
38 United States Code, which shall apply to all cases handled by the
39 magistrate.”.

40 (hh) The last sentence of section 2(k) of the Act of August 21, 1935,
41 ch. 593, as amended (49 Stat. 666; 16 U.S.C. 462), is amended to

1 read as follows: "Any person violating any rule or regulation pro-
2 mulgated under this Act shall be guilty of a regulatory offense un-
3 der section 2-8F6 of title 18, United States Code, except that the
4 maximum fine shall be \$500."

5 (ii) The last sentence of section 9 of the Act of June 7, 1924, ch.
6 561, as amended (43 Stat. 653; 16 U.S.C. 471), is amended to read
7 as follows: "Any person who shall violate any rule or regulation pro-
8 mulgated under his section shall be guilty of a regulatory offense
9 under section 2-8F6 of title 18, United States Code, except that the
10 maximum fine shall be \$500."

11 (jj) The first section of the Act of June 4, 1897, ch. 2 (30 Stat. 35;
12 16 U.S.C. 551), is amended by striking out in the first sentence all
13 after "regulations shall be" and inserting in lieu thereof the follow-
14 ing: "guilty of a regulatory offense under section 2-8F6 of title 18,
15 United States Code, except that the maximum fine shall be \$500.",
16 and by striking out "section 3401 (b)-(e) of title 18" and insert-
17 ing in lieu thereof "rules prescribed by the Supreme Court under
18 section 3-11A1 of title 18, United States Code".

19 (kk) Section 4 of the Act of May 28, 1940, ch. 220 (54 Stat. 225
20 16 U.S.C. 552d), is amended to read as follows:

21 "SEC. 4. Any person who shall violate a regulation promulgated
22 under this Act shall be guilty of a regulatory offense under section
23 2-8F6 of title 18, United States Code."

24 (ll) Section 14 of the Soil Conservation and Domestic Allotment
25 Act, as amended (49 Stat. 1151, 16 U.S.C. 590n), is amended by strik-
26 ing out in the last sentence of such section the phrase ", under the pen-
27 alties of title 18".

28 (mm) Section 3 of the Act of June 3, 1878, ch. 150 (20 Stat. 89:
29 16 U.S.C. 606), is amended by striking out all after "shall be deemed
30 guilty" and inserting in lieu thereof "of a regulatory offense under
31 section 2-8F6 of title 18, United States Code, except that the maxi-
32 mum fine shall be \$500."

33 (nn) Section 7 of the Fish and Wildlife Coordination Act, as
34 amended (60 Stat. 1080; 16 U.S.C. 666a), is amended by striking out
35 all after "shall be guilty" and inserting in lieu thereof "of a regula-
36 tory offense under section 2-8F6 of title 18, United States Code, except
37 that the maximum fine shall be \$500."

38 (oo) The first section of the Act of June 8, 1940, ch. 228, as amended
39 (54 Stat. 250; 16 U.S.C. 668), is amended by:

40 (1) striking out "within the United States or any place subject
41 to the jurisdiction thereof," and

(2) by striking out “shall be fined not more than \$500 or imprisoned not more than 6 months, or both: *Provided*, That nothing” and inserting in lieu thereof “or whoever violates any permit or regulation issued pursuant to this Act, shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000: *Provided*, That in the case of a second or subsequent conviction for a violation of this section committed after the date of the enactment of this proviso, such person shall be fined not more than \$10,000 or imprisoned not more than two years, or both: *Provided further*, That the commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation of this section: *Provided further*, That one-half of any such fine, but not to exceed \$2,500, shall be paid to the person or persons giving information which leads to conviction: *Provided further*, That nothing”.

(pp) Section 4(b) of the Endangered Species Conservation Act of 1969 (83 Stat. 276; 16 U.S.C. 668cc-4), is amended by striking out all after “this section shall” and inserting in lieu thereof “be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$10,000.”.

(qq) Section 4(e) of the National Wildlife Refuge System Administration Act of 1966, as amended (80 Stat. 927; 16 U.S.C. 668dd), is amended by striking out all after “thereunder shall be” and inserting in lieu thereof “guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500.”.

(rr) Section 9 of the Act of April 23, 1928, ch. 413 (45 Stat. 450; 16 U.S.C. 690g), is amended by striking out all after “shall be guilty” and inserting in lieu thereof “of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500.”.

(ss) Section 2 of the Act of June 13, 1933, ch. 63 (48 Stat. 128; 16 U.S.C. 693), is amended by striking out all after “refuges, and” and inserting in lieu thereof “any person who shall violate such rules and regulation shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500.”.

(tt) Section 6 of the Migratory Bird Treaty Act, as amended (40 Stat. 756; 16 U.S.C. 707), is amended as follows:

(1) by striking out in subsection (a) all after “deemed guilty” and inserting in lieu thereof “of a regulatory offense under

1 section 2-8F6 of title 18, United States Code, except that the
2 maximum fine shall be \$500.”; and

3 (2) by striking out in subsection (b) all after “shall be guilty”
4 and inserting in lieu thereof “of a Class E felony, except that the
5 maximum fine shall be \$2,000”.

6 (uu) Section 5(b) of the Act of March 16, 1934, ch. 31, as amended
7 (48 Stat. 452; 16 U.S.C. 718e), is repealed.

8 (vv) Section 7 of the Act of March 13, 1934, ch. 71 (48 Stat. 452;
9 16 U.S.C. 718g), is amended by striking out all after “pursuant
10 thereto shall be” and inserting in lieu thereof “guilty of a regulatory
11 offense under section 2-8F6 of title 18, United States Code, except that
12 the maximum fine shall be \$500.”.

13 (ww) Section 11 of the Upper Mississippi River Wild Life and
14 Fish Refuge Act (43 Stat. 652; 16 U.S.C. 730), is amended by striking
15 out all after “shall be” and inserting in lieu thereof “guilty of a regula-
16 tory offense under section 2-8F6 of title 18, United States Code, except
17 that the maximum fine shall be \$500.”.

18 (xx) Section 6(a) of the Northern Pacific Halibut Act of 1937,
19 as amended (50 Stat. 328; 16 U.S.C. 772e), is amended by striking out
20 all after “Section 9 of this Act” and inserting in lieu thereof “shall be
21 guilty of a Class E felony, except that the maximum fine shall be
22 \$1,000.”.

23 (yy) The Sockeye Salmon or Pink Salmon Fishing Act of 1947,
24 as amended (61 Stat. 512; 16 U.S.C. 776(b) and 776(c)), is amended
25 as follows:

26 (1) by striking out in section 4, “or any person who furnishes
27 a false return, record, or report, upon conviction shall be subject
28 to such fine as may be imposed by the court not to exceed \$1,000,”
29 and inserting in lieu thereof “shall be guilty of a violation,
30 except that the maximum fine shall be \$1,000,”; and

31 (2) by striking out in section 5(a), “upon conviction shall be
32 fined not more than \$1,000 or be imprisoned not more than one
33 year, or both,” and inserting in lieu thereof “shall be guilty of a
34 Class E felony, except that the maximum fine shall be \$1,000.”.

35 (zz) Section 3 of the Act of August 15, 1914, ch. 253 (38 Stat. 692;
36 16 U.S.C. 783), is amended to read as follows:

37 “SEC. 3. Any person violating the provisions of this Act shall be
38 guilty of a violation, except that the maximum fine shall be \$500,
39 and in addition such fine shall be a lien against the vessel or boat
40 on which the offense is committed, and said vessel or boat shall be

1 seized and proceeded against by process of libel in any court having
2 jurisdiction of the offense.”.

3 (aaa) (1) The second sentence of section 18 of the Federal Power
4 Act, as amended (41 Stat. 1073; 16 U.S.C. 811) is amended by strik-
5 ing out all after “shall be” and inserting in lieu thereof “guilty of a
6 regulatory offense under section 2-8F6 of title 18, United States
7 Code, except that the maximum fine shall be \$500 for each day during
8 which such offense occurs.”.

9 (2) The second paragraph of section 304 (b) of such Act (49 Stat.
10 855; 16 U.S.C. 825c), is amended by striking out all after “for any
11 person” and inserting in lieu thereof “by physical interference or
12 obstacle knowingly to obstruct, impair, or pervert the making, fil-
13 ing, or keeping of any information, document, report, memorandum,
14 record, or account required to be made, filed, or kept under this title,
15 or any rule, regulation, or order thereunder.”.

16 (3) The last sentence of section 307 (c) of such Act (49 Stat. 956;
17 16 U.S.C. 825f), is repealed.

18 (4) Section 316 of such Act (49 Stat. 862; 16 U.S.C. 825o), is
19 amended as follows:

20 (A) by amending subsection (a) to read—

21 “(a) Any person who knowingly does or causes or suffers to be
22 done any act, matter, or thing in this Act prohibited or declared to be
23 unlawful, or who knowingly omits or fails to do any act, matter, or
24 thing in this Act required to be done, or knowingly causes or suffers
25 such omission or failure, shall be guilty of a Class E felony, except
26 that the maximum fine shall be \$5,000.”; and

27 (B) by amending subsection (b) to read—

28 “(b) Any person who knowingly violates any rule, regulation, re-
29 striction, condition, or order made or imposed by the Commission un-
30 der authority of this Act, or any rule or regulation imposed by the Sec-
31 retary of the Army under authority of this Act shall be guilty of
32 a regulatory offense under section 2-8F6 of title 18, United States
33 Code, except that the maximum fine shall be \$500 for each day during
34 which such offense occurs.”.

35 (bbb) Section 21 of the Tennessee Valley Authority Act of 1933
36 (48 Stat. 68; 16 U.S.C. 831t), is amended to read as follows:

37 “SEC. 21. Any person who shall receive any compensation, rebate,
38 or reward, or enter into any conspiracy, collusion, or agreement, ex-
39 pressed or implied with intent to defraud the Corporation or wrong-
40 fully or unlawfully to defeat its purposes shall be guilty of a
41 Class D felony, except that the maximum fine shall be \$5,000.”.

(ccc) Section 2 of the Act of May 20, 1926, ch. 346, as amended (44 Stat. 576; 16 U.S.C. 852), is amended by striking out in the third paragraph "section 10" and inserting in lieu thereof "section 1-1A4".

(ddd) Section 7 of the Act of May 20, 1926, ch. 346, as amended (46 Stat. 847; 16 U.S.C. 853), is amended by striking out all after "of this Act shall" and inserting in lieu thereof "be guilty of a misdemeanor, except that the maximum prison term shall be three months and the maximum fine shall be \$200."

(eee) Sections 7 and 8 of the Whaling Convention Act of 1849 (64 Stat. 423; 16 U.S.C. 916e and 916f), are amended to read as follows:

"SEC. 7. Any person who fails to make, keep, or furnish any catch return, statistical record, or any report that may be required by the convention, or by any regulation of the Commission, or by this Act, or by a regulation of the Secretary of the Interior shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, and shall in addition be prohibited from whaling, processing, or possessing whales and whale products from the date of conviction until such time as any delinquent return, record, or report shall have been submitted or any false return, record, or report shall have been replaced by a certified correct and true return, record, or report to the satisfaction of the court. The penalties imposed by section 8 of this Act shall not be invoked for failure to comply with requirements with respect to returns, records, and reports.

"SEC. 8. Except as to violations defined in clause (3) of subsection (a) of section 6 of this Act, any person violating any provision of the convention, or any regulation of the Commission, or of this Act, or any regulation of the Secretary of the Interior shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$10,000, and in addition, the court may prohibit such persons from whaling for such periods of time as it may determine, and may order forfeited, in whole or in part, the whales taken by such person in whaling during the season, or the whale products derived therefrom and the monetary value thereof. Such forfeited whales or whale products shall be disposed of in accordance with the direction of the court."

(fff) (1) Section 5 of the Tuna Conventions Act of 1950, as amended (64 Stat. 778; 16 U.S.C. 954) is amended by striking out "sections 281, 283, and 284 of title 18" and inserting in lieu thereof "chapter 91 of title 5"; and

(2) Subsections (d), (e), and (f) of section 8 of such Act (64 Stat. 779; 16 U.S.C. 957), are amended to read as follows -

1 “(d) Any person violating any provision of subsection (a) of this
2 section shall be guilty of a regulatory offense under section 2-8F6
3 of title 18, United States Code, except that the maximum fine for the
4 first such violation shall be \$25,000, and for each subsequent violation
5 of any provision of said subsection (a) the maximum fine shall be
6 \$50,000.

7 “(e) Any person violating any provision of subsection (b) of this
8 section shall be guilty of a regulatory offense under section 2-8F6 of
9 2-8F6 of title 18, United States Code, except that the maximum fine
10 for the first such violation shall be \$1,000, and for each subsequent
11 violation of any provision of said subsection (b) the maximum fine
12 shall be \$5,000.

13 “(f) Any person violating any provision of subsection (c) of this
14 section shall be deemed guilty of a regulatory offense under section
15 2-8F6 of title 18, United States Code, except that the maximum fine
16 shall be \$100,000.

17 (ggg) (1) Section 5 of the Northwest Atlantic Fisheries Act of 1950
18 (64 Stat. 1068; 16 U.S.C. 984), is amended by striking out “sections
19 281, 283, and 284 of title 18” and inserting in lieu thereof “chapter 91
20 of title 5”;

21 (2) Section 10 of such Act (64 Stat. 1070; 16 U.S.C. 989) is amended
22 by striking out all after “pursuant to this Act” and inserting in lieu
23 thereof “shall be deemed guilty of a regulatory offense under sec-
24 tion 2-8F6 of title 18, United States Code, except that the maximum
25 fine for the first such violation shall be \$500 and for each subsequent
26 violation committed within 5 years of the first the maximum fine
27 shall be not more than \$1,000, and the court may order forfeited, in
28 whole or in part, the fish taken by such person or the fishing gear
29 involved in such fishing, or both, or the monetary value thereof. Such
30 forfeited fish or fishing gear shall be disposed of in accordance with
31 the direction of the court.”; and

32 (3) Section 11 of such Act (64 Stat. 1070; 16 U.S.C. 990), is
33 amended by striking out in subsection (a) “section 3041 of title 18”
34 and inserting in lieu thereof “section 3-11B1 of title 18”.

35 (hhh) (1) Section 10 of the North Pacific Fisheries Act of 1954
36 (68 Stat. 699; 16 U.S.C. 1029), is amended by striking out in subsec-
37 tion (f) “or to obstruct such officials in the execution of such duties”
38 and inserting in lieu thereof “or by physical interference or obstacle
39 knowingly to obstruct or impair the administration of law or other
40 government function”; and

(2) Section 11 of such Act (68 Stat. 700; 16 U.S.C. 1030) is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) Any person violating subsections (b), (c), or (d) of section 10 of this Act shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$10,000, and for such offense the court may order forfeited, in whole or in part, the fish concerned in the offense, or the fishing gear involved in such fishing, or both, or the monetary value thereof. Such forfeited fish or fishing gear shall be disposed in accordance with the direction of the court.

“(b) Any person violating subsection (e) of section 10 of this Act shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$10,000.

“(c) Any person violating subsection (f) of section 10 of this Act shall be deemed guilty of a Class E felony, except that the maximum fine shall be \$10,000, and for each such offense the court may order forfeited, in whole or in part, the fish and fishing gear on board the vessel, or the monetary value thereof. Such fish or fishing gear shall be disposed in accordance with the direction of the court.

“(d) Any person violating any other provision of this Act or any regulation adopted pursuant to this Act, shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine for the first offense shall be \$500 and for a subsequent offense committed within five years shall be \$1,000 and for such subsequent offense the court may order forfeited, in whole or in part, the fish taken by such person, or the fishing gear involved in such fishing, or both, or the monetary value thereof. Such forfeited fish or fishing gear shall be disposed of in accordance with the direction of the court.”

(iii) Section 2 (a) of the Act of May 29, 1964 (78 Stat. 195; 16 U.S.C. 1082), is amended by striking out all after the word “shall” and inserting in lieu thereof “be guilty of a Class E felony, except that the maximum fine shall be \$100,000.”

(jjj) (1) Section 207 of the Fur Seal Act of 1966 (80 Stat. 1095; 16 U.S.C. 1167), is amended by striking out all after “located thereon” and inserting in lieu thereof “shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500.”; and

(2) Section 404 of such Act (80 Stat. 1098; 16 U.S.C. 1184) is amended by striking out all after “thereunder” and inserting in lieu thereof “shall be guilty of a regulatory offense under section 2-8F6

1 of title 18, United States Code, except that the maximum fine shall be
2 \$2,000.”.

3 (kkk) Section 7 of the National Trails System Act (82 Stat. 922;
4 16 U.S.C. 1246), is amended by striking out in the last sentence there-
5 of all after “violates such regulations” and inserting in lieu thereof
6 “shall be guilty of a regulatory offense under section 2-8F6 of title 18,
7 United States Code, except that the maximum fine shall be \$500.”.

R SEC. 323. (a) This section may be cited as the “Miscellaneous Bird
9 Sanctuaries Crimes Act of 1973.”

10 (b) Whoever, except in compliance with rules and regulations
11 promulgated by authority of law, hunts, traps, captures, knowingly
12 disturbs or kills any bird, fish, or wild animal of any kind whatever, or
13 takes or destroys the eggs or nest of any such bird or fish, on any lands
14 or waters which are set apart or reserved as sanctuaries, refuges, or
15 breeding grounds for such birds, fish, or animals under any law of
16 the United States shall be guilty of a misdemeanor, except that the
17 maximum fine shall be \$500.

18 SEC. 324. (a) This section may be cited as the “Miscellaneous Animal
19 Importation Crimes Act of 1973.”

20 (b) (1) The importation into the United States, any territory of
21 the United States, the District of Columbia, the Commonwealth
22 of Puerto Rico, or any possession of the United States, or any ship-
23 ment between the continental United States, the District of Columbia,
24 Hawaii, the Commonwealth of Puerto Rico, or any possession of
25 the United States, of the mongoose of the species *Herpestes auro-*
26 *punctatus*; of the species of so-called “flying foxes” or fruit bats of
27 the genus *Pteropus*; and such other species of wild mammals, wild
28 birds, fish (including mollusks and crustacea), amphibians, reptiles,
29 or the offspring or eggs of any of the foregoing which the Secretary
30 of the Interior may prescribe by regulation to be injurious to human
31 beings, to the interests of agriculture, horticulture, forestry, or to wild-
32 life or the wildlife resources of the United States, is hereby prohibited.
33 All such prohibited mammals, birds, fish (including mollusks and
34 crustacea), amphibians, and reptiles, and the eggs or offspring there-
35 from, shall be promptly exported or destroyed at the expense of the
36 importer or consignee. Nothing in this section shall be construed to
37 repeal or modify any provision of the Public Health Service Act or
38 Federal Food, Drug, and Cosmetic Act. Also, this section shall not
39 authorize any action with respect to the importation of any plant
40 pest as defined in the Federal Plant Pest Act, insofar as such importa-
41 tion is subject to regulation under that Act.

1 (2) As used in this subsection, the term "wild" relates to any
2 creatures that, whether or not raised in captivity, normally are found
3 in a wild state; and the terms "wildlife" and "wildlife resources"
4 include those resources that comprise wild mammals, wild birds, fish
5 (including mollusks and crustacea), and all other classes of wild
6 creatures whatsoever, and all types of aquatic and land vegetation
7 upon which such wildlife resources are dependent.

8 (3) Notwithstanding the foregoing, the Secretary of the Interior,
9 when he finds that there has been a proper showing of responsibility
10 and continued protection of the public interest and health, shall permit
11 the importation for zoological, educational, medical, and scientific
12 purposes of any mammals, birds, fish (including mollusks and
13 crustacea), amphibia, and reptiles, or the offspring or eggs thereof,
14 where such importation would be prohibited otherwise by or pur-
15 suant to this Act, and this Act shall not restrict importations by Fed-
16 eral agencies for their own use.

17 (4) Nothing in this subsection shall restrict the importation of
18 dead natural-history specimens for museums or for scientific collec-
19 tions, or the importation of domesticated canaries, parrots (including
20 all other species of psittacine birds), or such other cage birds as the
21 Secretary of the Interior may designate.

22 (5) The Secretary of the Treasury and the Secretary of the Interior
23 shall enforce the provisions of this subsection, including any regula-
24 tions issued hereunder, and, if requested by the Secretary of the
25 Interior, the Secretary of the Treasury may require the furnishing of
26 an appropriate bond when desirable to insure compliance with such
27 provisions.

28 (c) Whoever violates this section, or any regulation issued pursuant
29 thereto shall be guilty of a regulatory offense under section 2-8F6
30 of title 18, United States Code, except that the maximum fine shall be
31 \$500.

32 (d) The Secretary of the Treasury shall prescribe such require-
33 ments and issue such permits as he may deem necessary for the trans-
34 portation of wild animals and birds under humane and healthful
35 conditions, and it shall be unlawful for any person, including any
36 importer, knowingly to cause or permit any wild animal or bird to
37 be transported to the United States, or any Territory or district
38 thereof, under inhumane or unhealthful conditions or in violation of
39 such requirements. In any criminal prosecution for violation of this
40 subsection and in any administrative proceeding for the suspension
41 of the issuance of further permits --

(1) the condition of any vessel or conveyance, or the enclosure in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and

(2) the presence in such vessel or conveyance at such time of a substantial ratio of dead, crippled, diseased, or starving wild animals or birds shall be deemed prima facie evidence of the violation of the provisions of this subsection.

(e) Any employee authorized by the Secretary of the Interior to enforce this section and any officer of the customs may (1) execute any warrant to search for and seize any wild life, product, property, or item used or possessed in connection with a violation of this section, and any such wild life, product, property, or item so seized shall be held by him or by the United States marshal pending disposition thereof by the court, (2) execute any other warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this section, and (3) arrest any person who violates this section.

SEC. 325. (a) This section may be cited as the "Miscellaneous Wildlife Transportation Crimes Act of 1973."

(b) Any person who—

(1) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold in interstate or foreign commerce any wildlife taken, transported, or sold in any manner in violation of any law or regulation of any State or foreign country; or

(c) Any person who—

(1) sells or causes to be sold any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) sells or causes to be sold in interstate or foreign commerce any products manufactured, made, or processed from any wild-

1 life taken, transported, or sold in any manner in violation of
2 any law or regulation of a State or a foreign country, or

3 (3) having purchased or received wildlife imported from any
4 foreign country or shipped, transported, or carried in interstate
5 commerce, makes or causes to be made any false record, account,
6 label, or identification thereof, or

7 (4) receives, acquires, or purchases for commercial or non-
8 commercial purposes any wildlife—

9 (A) taken, transported, or sold in violation of any law
10 or regulation of any State or foreign country and delivered,
11 carried, transported, or shipped by any means or method in
12 interstate or foreign commerce, or

13 (B) taken, transported, or sold in violation of any Act
14 of Congress or regulation issued thereunder, or

15 (5) imports from Mexico to any State, or exports from any
16 State to Mexico, any game mammal, dead or alive, or part or
17 product thereof, except under permit or other authorization of
18 the Secretary or, in accordance with any regulations prescribed
19 by him, having due regard to the requirements of the Migratory
20 Birds and Game Mammals Treaty with Mexico and the laws of
21 the United States forbidding importation of certain live mammals
22 injurious to agriculture and horticulture;

23 shall be subject to the penalties prescribed in subsections (d) and (e)
24 of this section.

25 (d) (1) Any person who violates any provision of subsection (b) or
26 (c) of this section may be assessed a civil penalty by the Secretary of
27 not more than \$5,000 for each such violation. Each violation shall be
28 a separate offense. No penalty shall be assessed unless such person is
29 given notice and opportunity for a hearing with respect to such vio-
30 lation. Any such civil penalty may be compromised by the Secretary.
31 Upon any failure to pay the penalty assessed under this paragraph,
32 the Secretary may request the Attorney General to institute a civil
33 action in a district court of the United States for any district in which
34 such person is found or resides or transacts business to collect the
35 penalty and such court shall have jurisdiction to hear and decide any
36 such action. In hearing such action, the court shall have authority to
37 review the violation and the assessment of the civil penalty de novo.

38 (2) Any employee authorized by the Secretary to enforce the provi-
39 sions of this section, or any officer of the customs, shall have authority
40 to execute any warrant to search for and seize any wildlife, product,
41 property, or item used or possessed in violation of this section with

1 respect to which a civil penalty may be assessed pursuant to paragraph
2 (1) of this subsection. Such wildlife, product, property, or item so
3 seized shall be held by such employee pending disposition of proceed-
4 ings by the Secretary involving the assessment of a civil penalty pur-
5 suant to paragraph (1) of this subsection; except that the Secretary
6 may, in lieu of holding such wildlife, product, property, or item, per-
7 mit such person to post a bond or other surety satisfactory to the Secre-
8 tary. Upon the assessment of a civil penalty pursuant to paragraph
9 (1) of this subsection for any nonwillful violation of this section, such
10 wildlife, product, property, or item so seized may be proceeded against
11 in any court of competent jurisdiction and forfeited to the Secretary
12 for disposition by him in such manner as he deems appropriate. The
13 owner or consignee of any such wildlife, product, property, or item so
14 seized shall, as soon as practicable following such seizure, be notified
15 of that fact in accordance with regulations established by the Secretary
16 or the Secretary of the Treasury. Whenever any wildlife, product,
17 property, or item is seized pursuant to this subsection, the Secretary
18 shall move to dispose of the civil penalty proceedings pursuant to
19 paragraph (1) of this subsection as expeditiously as possible. If, with
20 respect to any such wildlife, product, property, or item so seized, no
21 action is commenced in any court of competent jurisdiction to obtain
22 the forfeiture of such wildlife, product, property, or item within thirty
23 days following the disposition of proceedings involving the assessment
24 of a civil penalty, such wildlife, product, property, or item shall be im-
25 mediately returned to the owner or the consignee in accordance with
26 regulations promulgated by the Secretary.

27 (e) Any person who knowingly violates any provision of subsec-
28 tion (b) or (c) of this section shall be guilty of a Class E felony, except
29 that the maximum fine shall be \$10,000.

30 (f) Any employee authorized by the Secretary of the Interior to en-
31 force this section and any officer of the customs may (1) execute any
32 warrant to search for and seize any wildlife, product, property, or
33 item used or possessed in connection with a knowing violation of this
34 section, and any such wildlife, product, property, or item so seized shall
35 be held by him or by the United States marshal pending disposition
36 thereof by the court, (2) execute any other warrant or other process
37 issued by an officer or court of competent jurisdiction to enforce the
38 provisions of this section, and (3) arrest any person he has probable
39 cause to believe is violating this section in his presence or view.

40 (g) Any wildlife or products thereof seized in connection with any
41 knowing violation of this section with respect to which a penalty may

1 be imposed pursuant to subsection (e) shall, upon conviction of such
2 violation, be forfeited to the Secretary to be disposed of by him in
3 such manner as he deems appropriate. Any other property or item so
4 seized may upon conviction, in the discretion of the court, be for-
5 feited to the United States or otherwise disposed of. The owner or
6 consignee of any such wildlife, product, property, or item so seized
7 shall, as soon as practicable following such seizure, be notified of that
8 fact in accordance with regulations established by the Secretary or the
9 Secretary of the Treasury. If no conviction results from any such al-
10 leged violation, such wildlife, product, property, or item so seized shall
11 be returned to the owner or consignee in accordance with regulations
12 promulgated by the Secretary, unless the Secretary, within thirty days
13 following the final disposition of the case involving such violation,
14 commences proceedings under subsection (d) of this section.

15 (h) For the purpose of this section, the term—

16 (1) “Secretary” means the Secretary of the Interior;

17 (2) “person” means any individual, firm, corporation, associa-
18 tion, or partnership;

19 (3) “wildlife” means any wild mammal, wild bird, amphibian,
20 reptile, mollusk, or crustacean, or any part, egg, or offspring
21 thereof, or the dead body or parts thereof, but does not include
22 migratory birds for which protection is afforded under the Mi-
23 gratory Bird Treaty Act, as amended;

24 (4) “State” means the several States, the District of Columbia,
25 the Commonwealth of Puerto Rico, American Samoa, the Virgin
26 Islands, and Guam; and

27 (5) “taken” means captured, killed, collected, or otherwise
28 possessed.

29 SEC. 326. (a) This section may be cited as the “Miscellaneous Wild-
30 life Labeling Crimes Act of 1973.”

31 (b) Whoever ships, transports, carries, brings, or conveys in
32 interstate or foreign commerce any package containing any wild
33 mammal, wild bird, amphibian, or reptile, or any mollusk or crusta-
34 cean, or the dead body or parts or eggs thereof without plainly mark-
35 ing, labeling, or tagging such package with the names and addresses
36 of the shipper and consignee and with an accurate statement showing
37 the contents by number and kind; or whoever ships, transports, car-
38 ries, brings, or conveys in interstate commerce any package contain-
39 ing migratory birds included in any convention to which the United
40 States is a party, without marking, labeling, or tagging such pack-
41 age as prescribed in such convention, or Act of Congress, or regulation

1 thereunder; or whoever ships, transports, carries, brings, or conveys in
2 interstate commerce any package containing furs, hides, or skins of
3 wild animals without plainly marking, labeling, or tagging such
4 package with the names and addresses of the shipper and consignee—
5 shall be guilty of a misdemeanor, except that the maximum fine shall
6 be \$500, and the shipment shall be forfeited.

7 (c) In any case where the marking, labeling, or tagging of a pack-
8 age under this section indicating in any way the contents thereof
9 would create a significant possibility of theft of the package or its
10 contents, the Secretary of the Interior may, upon request of the owner
11 thereof or his agent or by regulation, provide some other reasonable
12 means of notifying appropriate authorities of the contents of such
13 packages.

14 (d) Any employee authorized by the Secretary of the Interior to
15 enforce this section and any officer of the customs may (1) execute any
16 warrant to search for and seize any wild life, product, property, or
17 item used or possessed in connection with a violation of this section,
18 and any such wild life, product, property, or item so seized shall be
19 held by him or by the United States marshall pending disposition
20 thereof by the court, (2) execute any other warrant or other process
21 issued by an officer or court of competent jurisdiction to enforce the
22 provisions of this section, and (3) arrest any person who violates this
23 section.

24 SEC. 327. (a) This section may be cited as the "Miscellaneous Carrier
25 Pigeon Crimes Act of 1973."

26 (b) Whoever knowingly traps, captures, shoots, kills, possesses,
27 or detains an Antwerp or homing pigeon, commonly called carrier
28 pigeon, owned by the United States or bearing a band owned and
29 issued by the United States having thereon the letters "U.S.A." or
30 "U.S.N." and a serial number, shall be guilty of a misdemeanor, except
31 that the maximum fine shall be \$100. The possession or deten-
32 tion of any such pigeon without giving immediate notice by registered
33 mail to the nearest military or naval authorities, shall be prima facie
34 evidence of a violation of this section.

35 SEC. 328. (a) This section may be cited as the "Miscellaneous Noxious
36 Plants Crime Act of 1973."

37 (b) Whoever knowingly delivers or receives for transportation, or
38 transports, in interstate commerce, alligator grass (*alternanthera*
39 *philoxeroides*), or water chestnut plants (*trapa natans*) or water
40 hyacinth plants (*eichhornia crassipes*) or the seeds of such grass or
41 plants; or

(c) Whoever knowingly sells, purchases, barter, exchanges, gives, or receives any grass, plant, or seed which has been transported in violation of subsection (a) ; or

(d) Whoever knowingly delivers or receives for transportation, or transports, in interstate commerce, an advertisement to sell, purchase, barter, exchange, give, or receive alligator grass or water chestnut plants or water hyacinth plants or the seeds of such grass or plants shall be guilty of a misdemeanor, except that the maximum fine shall be \$500.

SEC. 329. (a) This section may be cited as the "Miscellaneous Unlawful Hunting Crimes Act of 1973."

(b) Whoever uses an aircraft or motor vehicle to hunt, for the purpose of capturing or killing, any unbranded horse, mare, colt, or burro running at large on any of the public land or ranges shall be guilty of a misdemeanor, except that the maximum fine shall be \$500.

(c) Whoever pollutes or causes pollution of any watering hole on any public land or range for the purpose of trapping, killing, wounding, or maiming any of the animals referred to in subsection (a) of this section shall be guilty of a misdemeanor, except that the maximum fine shall be \$500.

(d) As used in subsection (b) of this section—

(1) the term "aircraft" means any contrivance used for flight in the air ; and

(2) the term "motor vehicle" means an automobile, an automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land.

PART N—TITLE 17, U.S.C., AMENDMENTS

SEC. 330. (a) Section 14 of title 17, United States Code, is amended by deleting "liable to a fine of \$100 and" and inserting in lieu thereof "guilty of a violation, except that the maximum fine shall be \$100 and shall be liable".

(b) Section 18 of title 17, United States Code, is amended to read as follows:

"SEC. 18. Any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall, in addition to any other penalty provided by law, be deemed to have forfeited all rights and privileges under such copyright."

(c) Section 104 of title 17, United States Code, is amended to read as follows:

1 “SEC. 104. (a) Any person who knowingly and for profit shall in-
2 fringe any copyright secured by this title shall be guilty of a misde-
3 meanor, except that the minimum fine shall be \$100 and the maximum
4 fine shall be \$1,000.

5 “(b) The performance of religious or secular works such as ora-
6 torios, cantatas, masses, or octavo choruses by public schools, church
7 choirs or vocal societies, rented, borrowed, or obtained from some
8 public library, public school, church choir, school choir, or vocal so-
9 ciety, if such performance was given for charitable or educational
10 purposes and not for profit, shall be a defense in connection with
11 action pursuant to subsection (a) of this section.”

12 (d) Section 105 of title 17, United States Code, is amended (1) by
13 deleting “a misdemeanor, punishable by a fine of not less than \$100
14 and not more than \$1,000.” and inserting in lieu thereof “guilty of a
15 violation, except that the minimum fine shall be \$100 and the maxi-
16 mum fine shall be \$1,000.”, and (2) by deleting “liable to a fine of
17 \$100.” and inserting in lieu thereof “guilty of a violation, except that
18 the maximum fine shall be \$100.”.

19 (e) Subsection (a) of section 115 of title 17, United States Code,
20 is repealed.

21 PART O—TITLE 19, U.S.C., AMENDMENTS

22 SEC. 331. (a) Section 2636, Revised Statutes (19 U.S.C. 60), is
23 amended by striking out the word “offense” and inserting in lieu
24 thereof “occurrence”.

25 (b) Section 3068, Revised Statutes, as amended (19 U.S.C. 70), is
26 amended by striking out the word “offense” and inserting in lieu
27 thereof “occurrence”.

28 (c) Section 19 of the Act of June 18, 1934, ch. 590, as amended (48
29 Stat. 1003; 19 U.S.C. 81s), is amended by striking out all after “shall
30 be” and inserting in lieu thereof “guilty of a regulatory offense under
31 section 2-8F6 of title 18, United States Code, except that the maximum
32 fine shall be \$1,000. Each day during which violation continues shall
33 constitute a separate offense.”.

34 (d) Section 3113, Revised Statutes (19 U.S.C. 283) is amended by
35 striking out “, and such saloon keeper or other person so purchasing
36 or owning shall be liable to a penalty of not less than \$100 and not more
37 than \$500 and shall be punishable by imprisonment for not less than
38 3 months and not more than two years”.

39 (e) Section 5071, Revised Statutes (19 U.S.C. 507) is amended by
40 striking out “without reasonable excuse” and inserting in lieu thereof
41 “knowingly”, and by striking out all after “shall be” and inserting

1 in lieu thereof "guilty of a violation, except that the maximum fine
2 shall be \$200."

3 (f) (1) Section 304(e) of the Tariff Act of 1930, as amended (46
4 Stat. 687, 19 U.S.C. 1304), is repealed;

5 (2) Section 333(b) of such Act (46 Stat. 699; 19 U.S.C. 1333), is
6 amended by striking out the second sentence and inserting in lieu
7 thereof the following new sentence: "Contumacy or refusal to obey a
8 subpoena of the Commission shall be punishable as a violation of sec-
9 tion 2-6C2 of title 18, United States Code.";

10 (3) Section 341 of such Act (46 Stat. 707; 19 U.S.C. 1341), is
11 repealed;

12 (4) Section 431(b) of such Act (46 Stat. 710; 19 U.S.C. 1431), is
13 amended by striking out in the last sentence "fine or" and inserting in
14 lieu thereof "civil";

15 (5) Section 436 of such Act (46 Stat. 711; 19 U.S.C. 1436), is
16 amended to read—

17 "SEC. 436. Every master who fails to make the report or entry pro-
18 vided for in sections 433, 434, or 435 of this Act shall, for each such
19 offense, be guilty of a violation, except that the maximum fine
20 shall be \$1,000, and if the vessel has, or is discovered to have had, on
21 board, any merchandise (sea stores excepted), the importation of
22 which into the United States is prohibited, or any spirits, wine, or
23 other alcoholic liquor, such master shall be guilty of a Class E felony,
24 except that the maximum fine shall be \$2,000.";

25 (6) Section 438 of such Act (46 Stat. 712; 19 U.S.C. 1438), is
26 amended by striking out the second sentence and inserting in lieu
27 thereof the following new sentence: "Any consul offending against
28 the provisions of this section shall be guilty of a violation, except that
29 the maximum fine shall be \$5,000.";

30 (7) Section 445 of such Act (46 Stat. 713; 19 U.S.C. 1445), is
31 amended by striking out the word "offense" and inserting in lieu
32 thereof "occurrence";

33 (8) The last sentence of section 455 of such Act (46 Stat. 716;
34 19 U.S.C. 1455), is repealed;

35 (9) Section 460 of such Act (46 Stat. 716; 19 U.S.C. 1460), is
36 amended by striking out the word "offense" and inserting in lieu
37 thereof "occurrence";

38 (10) Section 464 of such Act (46 Stat. 718; 19 U.S.C. 1464); is
39 amended by striking out "he shall be guilty of a felony and upon
40 conviction thereof shall be fined not more than \$1,000 or imprisoned
41 for not more than 5 years, or both; and";

1 (11) The last sentence of section 465 of such Act (46 Stat. 718;
2 19 U.S.C. 1465), is repealed;

3 (12) Section 510 of such Act (46 Stat. 733; 19 U.S.C. 1510), is
4 amended to read—

5 “SEC. 510. Any person so cited to appear who shall neglect or
6 refuse to attend, or shall decline to answer, or refuse to answer in
7 writing any interrogatories or to subscribe his name to his deposition,
8 or to produce such papers when so required by a judge of the United
9 States customs court, or a division of such court, or an appraiser, or
10 a collector, shall be guilty of a violation of section 2-6C2 of title
11 18, United States Code. If such person shall be the owner, importer,
12 or consignee, the appraisement last made of any such merchandise,
13 whether made by an appraiser, a judge of the United States customs
14 court, or a division of such court, shall be final and conclusive against
15 such person. If such person is the owner, importer, or consignee, the
16 merchandise shall be forfeited or the value thereof may be recovered
17 from him.”;

18 (13) Section 581 of such Act (46 Stat. 747; 19 U.S.C. 1581), is
19 amended as follows:

20 (A) subsection (c) is repealed;

21 (B) subsection (d) is amended by striking out all after “shall
22 be” and inserting in lieu thereof “guilty of a violation, except
23 that the maximum fine shall be \$5,000.”; and

24 (C) subsection (f) is amended by striking out “, and to use
25 all necessary force, to seize and arrest the same”;

26 (14) Section 58(e) of such Act (46 Stat. 749, 17 U.S.C. 1586), is
27 amended by striking out all after “section shall” and inserting in lieu
28 thereof “be guilty of a Class E felony.”;

29 (15) The second sentence of section 599 of such Act (46 Stat. 723;
30 19 U.S.C. 1599), is amended to read as follows: “Every person who,
31 violates this section shall be guilty of a violation, except that the
32 maximum fine shall be \$500.”;

33 (16) Subparagraph (3) of section 613 of such Act (46 Stat. 756;
34 19 U.S.C. 1613) is amended by striking out “fine” and inserting in
35 lieu thereof “penalty”;

36 (17) Section 618 of such Act (46 Stat. 757; to U.S.C. 1618) is
37 amended by striking out the word “fine” wherever it appears in such
38 section; and

39 (18) Section 620 of such Act (46 Stat. 758; 19 U.S.C. 1620) is
40 amended by striking out in the first sentence thereof all after “shall
41 be” and inserting in lieu thereof “guilty of a Class E felony, except

1 that the maximum fine shall be \$10,000. Any person so convicted shall
2 be disqualified from any federal position or category thereof in ac-
3 cordance with section 1-4A3 of title 18, United States Code, for such
4 period as the court may determine.”.

5 (g) Section 8 (b) of the Anti-Smuggling Act (49 Stat. 520; 19
6 U.S.C. 1708) is repealed.

7 (h) Sections 319 and 335 of the Trade Expansion Act of 1962 (76
8 Stat. 892 and 897; 19 U.S.C. 1919 and 1975) are repealed.

9 SEC. 331. (a) The section may be cited as the “Miscellaneous Custom
10 Forfeiture and Crimes Act of 1973.”

11 (b) Whoever, being an officer of the revenue, knowingly admits to
12 entry, any goods, wares, or merchandise, upon payment of less than
13 the amount of duty legally due, shall be removed from office.

14 (c) Merchandise introduced into the United States in violation of
15 section 2-6G4 of title 18, United States Code, or the value thereof, shall
16 be recovered from any person violating such section 2-6G4 and shall
17 be forfeited to the United States.

18 (d) Merchandise fraudulently concealed, removed, or repacked,
19 or packages upon which marks or numbers have been fraudulently
20 altered, defaced, or obliterated, shall be forfeited to the United States.

21 (e) Whoever, being an officer of the United States, without lawful
22 authority, compromises or abates any claim of the United States
23 arising under the customs laws or any fine, penalty, or forfeiture or
24 in any manner relieves any person, vessel, vehicle, merchandise, or
25 baggage therefrom, shall be guilty of a Class E felony, except that the
26 maximum fine shall be \$5,000.

27 (f) Whoever, not being in the United States service and not being
28 authorized by law for the purpose, goes on board any vessel about to
29 arrive at the place of her destination, before her actual arrival, and
30 before she has been completely moored, shall be guilty of a misde-
31 meanor, except that the maximum fine shall be \$200. The master of
32 such vessel may take any such action or take any such person into
33 custody, and deliver him to any law enforcement officer, to be by him
34 taken before any committing magistrate, to be dealt with according
35 to law.

36 PART P—TITLE 20, U.S.C., AMENDMENTS

37 SEC. 332. (a) Paragraph (3) of subsection (f) of section 1001 of
38 the National Defense Education Act of 1958 is repealed.

39 (b) Subsection (f) (4) (B) of section 1001 of the National Defense
40 Education Act of 1958 is amended by deleting “fined not more than
41 \$10,000 or imprisoned not more than five years, or both.” and inserting

1 in lieu thereof "guilty of a Class E felony, except that the maximum
2 fine shall be \$10,000."

3 PART Q—TITLE 21, U.S.C., AMENDMENTS

4 SEC. 333. (a) Section 2 of the Act of July 1, 1902 (21 U.S.C. 17)
5 is amended to read as follows:

6 "SEC. 2. If any person violates the provisions of section 1 of this Act.
7 he shall be guilty of a violation, except that the minimum fine shall
8 be \$500 and the maximum fine shall be \$2,000. The jurisdiction for
9 the prosecution of such violation shall be within the district of the
10 United States court in which it is committed."

11 (b) Section 3 of the Act of March 4, 1923 (21 U.S.C. 63) is
12 amended to read as follows:

13 "SEC. 3. Any person violating any provision of this Act shall
14 upon conviction thereof be guilty of a Class E felony, except that
15 the maximum fine shall be \$1,000."

16 (c) Section 6 of the Act of August 30, 1890 (21 U.S.C. 104) is
17 amended by deleting "Any person who shall knowingly violate the
18 foregoing provisions shall be guilty of a misdemeanor and shall, on
19 conviction, be punished by a fine not exceeding \$5,000, or by imprison-
20 ment not exceeding three years, and any" and inserting in lieu thereof
21 the word "Any".

22 (d) Section 7 of the Act of May 29, 1884 (21 U.S.C. 117) is
23 amended by deleting "misdemeanor and, upon conviction, shall be
24 punished by a fine of not less than \$100 nor more than \$5,000 or by
25 imprisonment for not more than one year, or by both such fine and
26 imprisonment." and inserting in lieu thereof "Class E felony, ex-
27 cept that the minimum fine shall be \$100 and the maximum fine shall
28 be \$5,000."

29 (e) Section 3 of the Act of February 2, 1903 (21 U.S.C. 122) is
30 amended by deleting "misdemeanor, and on conviction shall be pun-
31 ished by a fine of not less than \$100 nor more than \$1,000, or by im-
32 prisonment not more than one year, or by both such fine and imprison-
33 ment." and inserting in lieu thereof "regulatory offense under section
34 2-8F6 of title 18, United States Code, except that the minimum fine
35 shall be \$100 and the maximum fine shall be \$1,000."

36 (f) Section 6 of the Act of March 3, 1905 (21 U.S.C. 127), is
37 amended to read as follows:

38 "SEC. 6. Any person or company violating the provisions of section 2
39 or 4 of this Act shall be guilty of a misdemeanor, except that the
40 minimum fine shall be \$100 and the maximum fine shall be \$1,000."

(g) Section 6 of the Act of July 2, 1962 (21 U.S.C. 134e), is amended by deleting "punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both." and inserting in lieu thereof "guilty of a Class E felony."

(h) Section 2 of the Act of May 6, 1970 (21 U.S.C. 135a), is amended to read as follows:

"SEC. 2. The movement of an animal to the island and movement from the island to another part of the United States shall each be deemed an introduction of the animal into the United States for purposes of section 2-6G4 of title 18, United States Code."

(i) Section 5 of the Act of February 15, 1927 (21 U.S.C. 145), is amended by deleting "punished by a fine of not less than \$50 nor more than \$2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.", and inserting in lieu thereof "guilty of a Class E felony, except that the minimum fine shall be \$50 and the maximum fine shall be \$2,000."

(j) The seventh paragraph under the heading "General Expenses, Bureau of Animal Industry" of the Act of March 4, 1913 (21 U.S.C. 158), is amended by deleting "Any person, firm, or corporation who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not exceeding \$1,000 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court." and inserting in lieu thereof the following: "Any person or firm who shall violate any of the provisions of this Act (other than the provision set forth in the second sentence of the seventh paragraph under the heading 'General Expenses, Bureau of Animal Industry' of this Act (21 U.S.C. 152)) shall be guilty of a Class E felony, except that the maximum fine shall be \$1,000."

(k) The first section of the Act of August 11, 1955 (21 U.S.C. 198a), is amended by deleting "section 545 of title 18" and inserting in lieu thereof "section 2-6G4 of title 18".

(l) Section 3 of the Act of August 11, 1955 (21 U.S.C. 198c), is amended by adding at the end thereof the following new sentence: "The provisions of section 2-6C2 of title 18, United States Code, shall be applicable with respect to any subpoena issued pursuant to this Act."

(m) The Act of March 3, 1915 (38 Stat. 817; 21 U.S.C. 201-215), is repealed.

(n) Section 301(h) of the Act of June 25, 1938 (21 U.S.C. 331), is amended to read as follows:

1 “(h) (1) (A) The giving by any person of a guaranty or undertak-
2 ing referred to in section 303(c) (2) of this Act which guaranty or
3 undertaking is false; or (B) the giving of a guaranty or undertaking
4 referred to in section 303(c) (3) of this Act which guaranty or un-
5 dertaking is false.

6 “(2) It is a defense to a prosecution under subclause (1) (A) of this
7 clause if such person relied upon a guaranty or undertaking to the
8 same effect signed by, and containing the name and address of, the
9 person residing in the United States from whom he received in
10 good faith the food, drug, device, or cosmetic.”

11 (o) Section 301(i) (1) of the Act of June 25, 1938 (21 U.S.C. 331),
12 is amended by deleting “Forging, counterfeiting, simulating, or falsely
13 representing, or without proper authority using” and inserting in
14 lieu thereof “Using, without proper authority,”.

15 (p) Section 303(a) of the Act of June 25, 1938 (21 U.S.C. 333), is
16 amended to read as follows:

17 “(a) (1) Any person who violates a provision of section 301 of this
18 Act, other than clause (j), shall be guilty of a Class E felony.

19 “(2) Any person who violates that part of clause (j) of such sec-
20 tion 301 relating to the use of information to his own advantage shall
21 be guilty of a misdemeanor.

22 “(3) Any person who violates that part of clause (j) of such section
23 301 relating to the revealing of such information shall be punished
24 in accordance with section 2-6F1 of title 18, United States Code.”

25 (q) Section 303(b) of the Act of June 25, 1938 (21 U.S.C. 333), is
26 amended by deleting “imprisoned for not more than three years or
27 fined not more than \$10,000 or both.” and inserting in lieu thereof
28 “guilty of a Class D felony, except that the maximum fine shall be
29 \$10,000.”.

30 (r) The last sentence of section 10A of the Act of June 30, 1906 (21
31 U.S.C. 372a), is amended to read as follows: “Any person, who, without
32 proper authority, uses any mark, stamp, tag, label, or other iden-
33 tification devices authorized or required by the provisions of this sec-
34 tion or regulations thereunder, shall be guilty of a Class E felony,
35 except that the minimum fine shall be \$1,000 and the maximum fine
36 shall be \$5,000.”.

37 (s) (1) Section 9 (c) (1) of the Act of August 28, 1957 (21 U.S.C.
38 458), is repealed.

39 (2) Section 9(c) (2) of such Act is amended by deleting “alter,”.

40 (3) Section 9 (c) (4) of such Act is amended by deleting “or any
41 counterfeit, simulated, forged, or improperly altered official certifi-

1 cate or any device or label or any carcass of any poultry, or part or
2 product thereof, bearing any counterfeit, simulated, forged, or im-
3 properly altered official mark”.

4 (4) Section 9(c) (5) of such Act is repealed.

5 (t) (1) Section 12(a) of the Act of August 28, 1957 (21 U.S.C.
6 461), is amended (1) by deleting “fined not more than \$1,000 or im-
7 prisoned not more than one year, or both;” and inserting in lieu there-
8 of “guilty of a regulatory offense under section 2-8F6 of title 18,
9 United States Code, except that the maximum fine shall be \$1,000;”
10 (2) by deleting “or attempted distribution”; (3) by deleting “fined
11 not more than \$10,000 or imprisoned not more than three years, or
12 both.” and inserting in lieu thereof “guilty of a regulatory offense
13 under section 2-8F6 of title 18, United States Code, except that the
14 maximum fine shall be \$10,000.”; and (4) by deleting “corporation,”
15 where it twice appears therein.

16 (2) Section 12(c) of such Act is repealed.

17 (u) Section 18(a) of the Act of August 28, 1957 (21 U.S.C. 467),
18 is amended by adding at the end thereof the following new sentence:
19 “Notwithstanding the foregoing provisions of this section, no refusal
20 to provide, or withdrawal of, such inspection services on the basis of
21 any such prior convictions shall be authorized, if a period of five years
22 following the completion of the sentence imposed in connection with
23 such conviction has lapsed and the affected person has not been
24 convicted of another such offense referred to in clause (1) or (2) of
25 this subsection during such period.”.

26 (v) (1) Section 11(b) (1) of the Federal Meat Inspection Act (21
27 U.S.C. 611), is repealed.

28 (2) Section 11(b) (2) of such Act is amended by deleting “use
29 any official device, mark, or certificate, or simulation thereof, or alter;”.

30 (3) Section 11(b) (4) of such Act is amended by deleting “or any
31 counterfeit, simulated, forged, or improperly altered official certifi-
32 cate or any device or label or any carcass of any animal, or part or
33 product thereof, bearing any counterfeit, simulated, forged, or im-
34 properly altered official mark”.

35 (w) Section 22 of the Federal Meat Inspection Act (21 U.S.C.
36 622), is repealed.

37 (x) Section 401 of the Federal Meat Inspection Act (21 U.S.C. 671),
38 is amended by adding at the end thereof the following new sentence:
39 “Notwithstanding the foregoing provisions of this section, no refusal
40 to provide, or withdrawal of, such inspection services on the basis of
41 any such prior convictions shall be authorized, if a period of five years

1 following the completion of the sentence imposed in connection with
2 such conviction has lapsed and the affected individual has not been
3 convicted of another such offense during such period.”.

4 (y) Section 405 of the Federal Meat Inspection Act (21 U.S.C. 675),
5 is repealed.

6 (z) Section 406(a) of the Federal Meat Inspection Act (21 U.S.C.
7 676), is amended to read as follows:

8 “(a) (1) Any person or firm who violates any provision of this
9 Act, other than section 20, for which no other criminal penalty is
10 provided by this Act shall be guilty of a Class E felony; but if such
11 violation involves intent to defraud, or any distribution or attempted
12 distribution of an article that is adulterated (except as defined in
13 section 1(m)(8) of this Act), such person or firm shall be guilty
14 of a Class D felony, except that the maximum fine shall be \$10,000.

15 “(2) It shall be a defense to any prosecution under this section for
16 receiving for transportation any article or animal in violation of
17 this Act, if such receipt was made in good faith, and such person
18 or firm has not refused to furnish, on request of a representative of
19 the Secretary, the name and address of the person from whom such
20 person or firm received such article or animal, and copies of all docu-
21 ments, if any, pertaining to the delivery of the article or animal to
22 such person or firm.”.

23 SEC. 334. (a) Section 401(a) of the Controlled Substances Act
24 (21 U.S.C. 841), is amended to read as follows:

25 “SEC. 401. (a) Except as authorized by this title, it shall be un-
26 lawful for any person knowingly to create, distribute, or dispense, or
27 possess with intent to distribute or dispense, a counterfeit substance.

28 “(b) Whoever violates the provisions of subsection (a) of this sec-
29 tion shall be guilty of a Class E felony.”.

30 (b) Subsections (b) and (c) of section 401 of the Controlled Sub-
31 stances Act (21 U.S.C. 841), are repealed.

32 (c) (1) Section 402(c) (2) (A) of the Controlled Substances Act
33 (21 U.S.C. 842), is amended by deleting “sentenced to imprisonment
34 of not more than one year or a fine of not more than \$25,000, or both.”
35 and inserting in lieu thereof “guilty of a Class E felony, except that
36 the maximum fine shall be \$25,000.”

37 (2) Subsection 402(c) (2) (B) of the Controlled Substances Act (21
38 U.S.C. 842), is amended by deleting “sentenced to a term of imprison-
39 ment of not more than 2 years, a fine of \$50,000, or both,” and insert-
40 ing in lieu thereof “guilty of a Class D felony except that the maxi-
41 mum fine shall be \$50,000.

1 (3) Section 402(c) of the Controlled Substances Act (21 U.S.C.
2 842), is amended by adding at the end thereof the following:

3 “(4) The penalties provided under this section shall not be applica-
4 ble with respect to any offense under subsection (a) (8) of this sec-
5 tion involving the revealing of such information referred to in such
6 clause (8).”

7 (d) Section 403 (a) of the Controlled Substances Act (21 U.S.C.
8 843), is amended to read as follows:

9 “(a) It shall be unlawful for any person knowingly—

10 “(1) to furnish false or fraudulent material information in,
11 or omit any material information from, any record or other docu-
12 ment required to be kept under this title or title III; or

13 “(2) to make, distribute, or possess any punch, die, plate, stone,
14 or other thing designed to print, imprint, or reproduce the trade-
15 mark, trade name, or other identifying mark, imprint, or device
16 of another or any likeness of any of the foregoing upon any drug
17 or labeling thereof so as to render such drug a counterfeit
18 substance.”.

19 (e) Subsection (b) of section 403 of such Act is hereby repealed.

20 (f) Subsection (c) of section 403 of such Act is amended (1) by
21 deleting “sentenced to a term of imprisonment of not more than 4
22 years, a fine of not more than \$30,000, or both;” and inserting in lieu
23 thereof “guilty of a Class D felony, except that the maximum fine
24 shall be \$30,000;” and (2) by deleting “sentenced to a term of im-
25 prisonment of not more than 8 years, a fine of not more than \$60,000,
26 or both.” and inserting in lieu thereof “guilty of a Class D felony,
27 except that the maximum fine shall be \$60,000.”

28 (g) Sections 404, 405, 406, 407, 408, 409, 410 and 411 of such Act are
29 hereby repealed.

30 (h) Subsection (c) of section 506 of such Act is amended by adding
31 at the end thereof the following new sentence: “The provisions of sec-
32 tion 2-6C2 of title 18, United States Code, shall be applicable with re-
33 spect to subpoenas issued pursuant to this section.”.

34 (i) Section 515 of such Act is hereby repealed.

35 SEC. 335. (a) Section 1002 of the Controlled Substances Import and
36 Export Act (21 U.S.C. 952), is amended to read as follows:

37 “SEC. 1002. (a) Section 2-9E1 of title 18, United States Code, shall
38 not be construed so as to prohibit the importation, pursuant to such
39 regulations as the Attorney General may prescribe, into the customs
40 territory of the United States from any place outside thereof (but
41 within the United States) of—

1 “(1) such amounts of crude opium and coca leaves as the Attor-
2 ney General finds to be necessary to provide for medical, scientific,
3 or other legitimate purposes, and

4 “(2) such amounts of any controlled substance in schedule I or
5 II or any narcotic drug in schedule III, IV, or V that the Attor-
6 ney General finds to be necessary to provide for the medical, scien-
7 tific, or other legitimate needs of the United States—

8 “(A) during an emergency in which domestic supplies of
9 such substance or drug are found by the Attorney General
10 to be inadequate, or

11 “(B) in any case in which the Attorney General finds that
12 competition among domestic manufacturers of the controlled
13 substance is inadequate and will not be rendered adequate
14 by the registration of additional manufacturers under section
15 303;

16 but in no event shall this subsection be construed as authorizing the
17 importation of crude opium for the purpose of manufacturing heroin
18 or smoking opium.

19 “(b) Section 2-9E1 of title 18, United States Code, shall not be
20 construed so as to prohibit the importation into the custom territory
21 of the United States from any place outside thereof (but within the
22 United States), or to import into the United States from any place
23 outside thereof, of any non-narcotic controlled substance in schedule
24 III, IV, or V, if any such substance—

25 “(1) is imported for medical, scientific, or other legitimate
26 uses, and

27 “(2) is imported pursuant to such notification or declaration
28 requirements as the Attorney General may by regulation
29 prescribe.”

30 (b) Section 1003 of such Act (21 U.S.C. 953) is amended to read as
31 follows:

32 “SEC. 1003. (a) Section 2-9E1 of title 18, United States Code, shall
33 not be construed so as to prohibit the exportation from the United
34 States of any narcotic drug in schedule I, II, III or IV, unless—

35 “(1) it is exported to a country which is a party to—

36 “(A) the International Opium Convention of 1912 for the
37 Suppression of the Abuses of Opium, Morphine, Cocaine, and
38 Derivative Drugs, or to the International Opium Conven-
39 tion signed at Geneva on February 19, 1925; or

40 “(B) the Convention for Limiting the Manufacture and
41 Regulating the Distribution of Narcotic Drugs concluded at

1 Geneva, July 13, 1931, as amended by the protocol signed at
2 Lake Success on December 11, 1946, and the protocol bring-
3 ing under international control drugs outside the scope of
4 the convention of July 13, 1931, for limiting the manufac-
5 ture and regulating the distribution of narcotic drugs (as
6 amended by the protocol signed at Lake Success on Decem-
7 ber 11, 1946), signed at Paris, November 19, 1948; or

8 “(C) the Single Convention on Narcotic Drugs, 1961,
9 signed at New York, March 30, 1961;

10 “(2) such country has instituted and maintains, in conformity
11 with the conventions to which it is a party, a system for the
12 control of imports of narcotic drugs which the Attorney General
13 deems adequate;

14 “(3) the narcotic drug is consigned to a holder of such per-
15 mits or licenses as may be required under the laws of the country
16 of import, and a permit or license to import such drug has been
17 issued by the country of import;

18 “(4) substantial evidence is furnished to the Attorney Gen-
19 eral by the exporter that (A) the narcotic drug is to be applied
20 exclusively to medical or scientific uses within the country of
21 import, and (B) there is an actual need for the narcotic drug
22 for medical or scientific uses within such country; and

23 “(5) a permit to export the narcotic drug in each instance has
24 been issued by the Attorney General.

25 “(b) Section 2-9E1 of title 18, United States Code, shall not be
26 construed so as to prohibit the exportation from the United States of
27 any narcotic drug (including crude opium and coca leaves) in sched-
28 ule I, II, III, or IV to a country which is a party to any of the inter-
29 national instruments mentioned in subsection (a) if the particular
30 drug is to be applied to a special scientific purpose in the country of
31 destination and the authorities of such country will permit the im-
32 portation of the particular drug for such purpose.

33 “(c) Section 2-9E1 of title 18, United States Code, shall not be con-
34 strued so as to prohibit the exportation from the United States of
35 any non-narcotic controlled substance in schedule I or II, if—

36 “(1) it is exported to a country which has instituted and main-
37 tains a system which the Attorney General deems adequate for
38 the control of imports of such substances;

39 “(2) such substance is consigned to a holder of such permits
40 or licenses as may be required under the laws of the country of
41 import;

1 “(3) substantial evidence is furnished to the Attorney General
2 that (A) such substance is to be applied exclusively to medical,
3 scientific, or other legitimate uses within the country to which
4 exported, (B) it will not be exported from such country, and (C)
5 there is an actual need for such substance for medical, scientific,
6 or other legitimate uses within the country; and

7 “(4) a permit to export such substance in each instance has been
R issued by the Attorney General.

9 “(d) Section 2-9E1 of title 18, United States Code, shall not be con-
10 strued so as to prohibit the exportation from the United States of
11 any non-narcotic controlled substance in schedule I or II, if the par-
12 ticular substance is to be applied to a special scientific purpose in the
13 country of destination and the authorities of such country will permit
14 the importation of the particular substance for such purpose.

15 “(e) Section 2-9E1 of title 18, United States Code, shall not be
16 construed so as to prohibit the exportation from the United States of
17 any non-narcotic controlled substance in schedule III or IV or any
18 controlled substance in schedule V, if—

19 “(1) there is furnished (before export) to the Attorney Gen-
20 eral documentary proof that importation is not contrary to the
21 laws or regulations of the country of destination;

22 “(2) a special invoice, in triplicate, accompanies the shipment
23 setting forth such information as the Attorney General may pre-
24 scribe to identify the parties to the shipment and the means of
25 shipping; and

26 “(3) two additional copies of the invoice are forwarded to the
27 Attorney General before the controlled substance is exported
28 from the United States.”.

29 (c) Section 1004 of such Act (21 U.S.C. 954) is amended to read as
30 follows:

31 “Sec. 1004. (a) Section 2-9E1 of title 18, United States Code, shall
32 not be construed so as to prohibit a controlled substance in schedule I
33 from being imported into the United States for transshipment (to
34 another country, or from being transferred or transshipped) from
35 one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft
36 within the United States for immediate exportation, if, and only if,
37 it is so imported, transferred, or transshipped (1) for scientific, medi-
38 cal, or other legitimate purposes in the country of destination, and
39 (2) with the prior written approval of the Attorney General (which
40 shall be granted or denied within 21 days of the request).

41 “(b) Such section shall not be construed so as to prohibit a con-

1 trolled substance in schedule II, III, or IV from being so imported,
2 transferred, or transshipped, if, and only if, advance notice is given
3 to the Attorney General in accordance with regulations of the At-
4 torney General.”

5 (d) Section 1005 of such Act (21 U.S.C. 955) is hereby repealed.

6 (e) (1) Subsection (a) of section 1006 of such Act (21 U.S.C. 956)
7 is amended by deleting “sections 1002 (a) and (b), 1003, 1004, and
8 1005” and inserting in lieu thereof “section 2-9E1 of title 18, United
9 States Code.”.

10 (2) Subsection (b) of section 1006 of such Act (21 U.S.C. 936) is
11 amended by inserting immediately after “of this title” the following:
12 “and section 2-9E1 of title 18, United States Code”.

13 (f) Subsection (a) of section 1007 of such Act (21 U.S.C. 957) is
14 amended to read as follows:

15 “(a) (1) The provisions of section 2-9E1 of title 18, United
16 States Code, shall not be construed so as to prohibit any person from
17 importing into the custom territory of the United States from any
18 place outside thereof (but within the United States), or from import-
19 ing into the United States from any place outside thereof, any con-
20 trolled substance, if there is in effect with respect to such person a
21 registration issued by the Attorney General under section 1008, or if
22 such person is exempt from registration under subsection (b).

23 “(2) The provisions of section 2-9E1 of title 18, United States Code,
24 shall not be construed so as to prohibit any person from exporting
25 from the United States any controlled substance in schedule I, II, III,
26 or IV, if there is in effect with respect to such person a registration
27 issued by the Attorney General under section 1008, or if such person
28 is exempt from registration under subsection (b).”.

29 (g) Sections 1009, 1010, 1011, 1012, 1013, and 1014 of such Act (21
30 U.S.C. 959, 960, 961, 962, 963 and 964) are hereby repealed.

31 PART R—TITLE 22, U.S.C., AMENDMENTS

32 SEC. 336. (a) Section 4064, Revised Statutes (22 U.S.C. 253), is
33 amended by striking out all after “shall be” and inserting in lieu
34 thereof “guilty of a Class E felony.”.

35 (b) Section 4065, Revised Statutes (22 U.S.C. 254), is amended to
36 read as follows:

37 “SEC. 4065. That the person against whom the process is issued is
38 a citizen or inhabitant of the United States, in the service of an ambas-
39 sador or a public minister, and the process is founded upon a debt
40 contracted before he entered upon such service shall be a defense to
41 an action under section 4063 or 4064, and that the person against whom

the process is issued is a domestic servant of an ambassador or a public minister, unless the name of the servant has, before the issuing of such process, been registered in the Department of State, and been transmitted by the Secretary of State to the marshal of the District of Columbia, who shall upon receipt thereof post the said list in some public place in his office, shall be a defense to an action under section 4063.”.

(c) Section 5 of the Act of April 29, 1964 (78 Stat. 185, 22 U.S.C.; 277d-21), is amended by striking out in the last sentence all after “shall be” and inserting in lieu thereof “guilty of a Class E felony, except that the maximum fine shall be \$2,000.”.

(d) Section 8 of the Act of July 31, 1945, ch. 339 (59 Stat. 515; 22 U.S.C. 286f), is amended as follows:

(1) by striking out in the second sentence of subsection (b) all after “subpena” and inserting in lieu thereof “served upon any such person by such agency shall be punishable as a violation of section 2-6C2 of title 18, United States Code.”; and

(2) by striking out in subsection (c) the second sentence.

(e) Subsection (b) of section 5 of the Act of December 20, 1945, ch. 583, as amended (59 Stat. 620; 22 U.S.C. 287c), is amended to read as follows:

“(b) Any person who knowingly violates or evades any order, rule, or regulation issued by the President pursuant to subsection (a) of this section shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$10,000, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.”.

(f) (1) Section 7 of the Act of November 4, 1939, ch. 2, as amended (54 Stat. 8; 22 U.S.C. 447), is amended by amending subsection (c) to read as follows—

“(c) Whoever shall knowingly violate this section or any regulation issued under this section shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$50,000.”;

(2) Section 10(a) of such Act (54 Stat. 9; 22 U.S.C. 450), is amended by striking out “section 31 of Title 18” and inserting in lieu thereof “subsection (k) of the Miscellaneous Foreign Relations Amendments Act”; and

1 (3) Section 15 of such Act (54 Stat. 11; 22 U.S.C. 455), is amended
2 by striking out all after "violators" and inserting in lieu thereof "shall
3 be guilty of a regulatory offense under section 2-8F6 of title 18,
4 United States Code, except that the maximum fine shall be \$10,000."

5 (g) Section 14 of the Act of March 4, 1909, ch. 321 (35 Stat. 1090;
6 22 U.S.C. 461), is amended by striking out the term "section 21-25,
7 and 30 of title 18" wherever it appears, and inserting in lieu thereof
8 "sections 2-5C1, 2-5C2, and 2-5C4 of title 18".

9 (h) (1) Section 4(d) of the Foreign Agents Registration Act of
10 1938, as amended (52 Stat. 632; 22 U.S.C. 614), is amended by striking
11 out "section 343 of Title 18" wherever it appears; and

12 (2) Section 5 of such Act (52 Stat. 633; 22 U.S.C. 615), is amended
13 by adding at the end thereof the following new sentence: "Any per-
14 son making or presenting false reports to any official charged with
15 enforcing this Act shall be guilty under section 2-6D2 of title 18,
16 United States Code, and shall be punished in accordance with such
17 section."; and

18 (3) Section 8(a) of such Act (56 Stat. 257; 22 U.S.C. 618), is
19 amended to read as follows:

20 "(a) Any person who knowingly violates any of the provisions of
21 this Act or any regulation promulgated thereunder shall be guilty
22 of a regulatory offense under section 2-8F6 of title 18, United States
23 Code."

24 (i) Section 3(c) of the Act of June 30, 1944, ch. 326, as amended
25 (58 Stat. 644; 22 U.S.C. 703), is amended by striking out all after
26 "thereof, shall" and inserting in lieu thereof "be guilty of a misde-
27 meanor, except that the maximum fine shall be \$2,000."

28 (j) Section 2 of the Act of June 30, 1902, ch. 1331 (36 Stat. 547; 22
29 U.S.C. 1179), is amended to read as follows:

30 "SEC. 2. Every consular officer who accepts any appointment to any
31 office of trust mentioned in the first section of this Act without first
32 having complied with the provisions thereof by execution of a bond
33 as required by this Act, or who shall knowingly fail or neglect or ac-
34 count for, pay over, and deliver any money, property, or effects so
35 received to any person lawfully entitled thereto, after having been
36 requested by any such person, his representative or agent to do so,
37 shall be guilty of a regulatory offense under section 2-8F6 of
38 title 18, United States Code, except that the maximum fine shall be
39 \$5,000."

40 (k) Section 1716, Revised Statutes (22 U.S.C. 1182), is amended by
41 striking out all after "shall be" and inserting in lieu thereof "guilty

1 of a misdemeanor, except that the maximum fine shall be \$2,000, and
2 shall be removed from his office.”.

3 (l) Section 1734, Revised Statutes, as amended (22 U.S.C. 1198), is
4 amended by striking out all after “shall be” and inserting in lieu
5 thereof “guilty of a regulatory offense under section 2-8F6 of
6 title 18, United States Code, except that the maximum fine shall be
7 \$2,000.”.

8 (m) Section 1736, Revised Statutes, as amended (22 U.S.C. 1199),
9 is amended by striking out “; and for all malversion and corrupt con-
10 duct in office, shall be punishable by imprisonment for not more than
11 five years and not less than one year, and by a fine of not more than
12 \$10,000 and not less than \$1,000”.

13 (n) Section 1737, Revised Statutes, as amended (22 U.S.C. 1200), is
14 repealed.

15 (o) The second sentence of section 1750, Revised Statutes, as
16 amended (22 U.S.C. 1203), is amended to read as follows: “Any docu-
17 ment purporting to have affixed, impressed, or subscribed thereto or
18 thereon the seal and signature of the officer administering or taking
19 the testimony contained in such document shall be admitted in evidence
20 without proof of any such seal or signature being genuine or the offi-
21 cial character of any such person.”.

22 (p) (1) Section 4 of the International Claims Settlement Act of
23 1949, as amended (64 Stat. 13; 22 U.S.C. 1623), is amended:

24 (A) by striking out the fifth and sixth sentences of subsection

25 (c) and inserting in lieu thereof “Disobedience to a subpoena shall
26 be deemed a violation of section 2-6C2 of title 18, United States
27 Code.”;

28 (B) by striking out in subsection (e) “section 1001 of title 18”
29 and inserting in lieu thereof “section 2-6D2 of title 18”; and

30 (C) by striking out in the last sentence of subsection (f) all
31 after “shall be” and inserting in lieu thereof “guilty of a regula-
32 tory offense under section 2-8F6 of title 18, United States Code,
33 except that the maximum fine shall be \$5,000”.

34 (2) Section 215 of such Act (69 Stat. 570; 22 U.S.C. 1631N), is
35 amended by striking all after “shall be” the first time it appears
36 therein and inserting in lieu thereof “guilty of a regulatory offense
37 under section 2-8F6 of title 18, United States Code, except that the
38 maximum fine shall be \$5,000.”;

39 (3) Section 312 of such Act (69 Stat. 574; 22 U.S.C. 1641K), is
40 amended by striking out “chapter 115 of title 18” and inserting in

1 lieu thereof "sections 2-5B1, 2-5B2, 2-5B3, 2-9D1, 2-5B6, 2-6D2(a)
2 (6), or 2-5B10 of title 18";

3 (4) Section 317 (a) of such Act (69 Stat. 574; 22 U.S.C. 1641p),
4 is amended by striking out in the last sentence all after "shall be"
5 and inserting in lieu thereof "guilty of a Class E felony, except that
6 the maximum fine shall be \$5,000.";

7 (5) Section 409 of such Act (72 Stat. 529; 22 U.S.C. 1642h), is
8 amended by striking out "chapter 115 of title 18" and inserting in
9 lieu thereof "sections 2-5B1, 2-5B2, 2-5B3, 2-9D1, 2-5B6, 2-6D2(a)
10 (6), or 2-5B10 of title 18";

11 (6) Section 414 of such Act (72 Stat. 530; 22 U.S.C. 1642m), is
12 amended by striking out in the last sentence all after "shall be" and
13 inserting in lieu thereof "guilty of a Class E felony, except that the
14 maximum fine shall be \$5,000."; and

15 (7) Section 412 of such Act (78 Stat. 1113; 22 U.S.C. 1653k), is
16 amended by striking out in the last sentence all after "shall be" and
17 inserting in lieu thereof "guilty of a class E felony, except that the
18 maximum fine shall be \$5,000.".

19 (q) Section 414(c) of the Act of August 26, 1954, ch. 937, as
20 amended (68 Stat. 848, 22 U.S.C. 1934), is amended by striking out
21 all after "section" and inserting in lieu thereof "shall be guilty of a
22 regulatory offense under section 2-8F6 of title 18, United States Code,
23 except that the maximum fine shall be \$25,000.".

24 (r) The first sentence of section 19 (b) (2) of the Peace Corps Act,
25 as amended (75 Sta. 623; 22 U.S.C. 2518), is amended by striking out
26 all after "shall be" and inserting in lieu thereof "guilty of a mis-
27 demeanor, except that the maximum fine shall be \$500.".

28 (s) Section 44 of the Arms Control and Disarmament Act, as
29 amended (75 Stat. 658; 22 U.S.C. 2584), is amended by striking out
30 "section 281, 283, 284, or 1914 of title 18, or of section 99 of title 5"
31 and inserting in lieu thereof "chapter 91 of title 5."

32 (t) Sections 4083 through 4091, 4097 through 4099, 4100 through
33 4122, 4125 through 4130, and 1693, Revised Statutes, are repealed.

34 SEC. 337. (a) This section may be cited as the "Miscellaneous Foreign
35 Relations Crimes Act of 1973."

36 (b) (1) Any person owning, in whole or in part, any vessel of the
37 United States who employs, or participates in, or allows the employ-
38 ment of, such vessel for the purpose of smuggling, or attempting or
39 assisting in smuggling any merchandise into the territory of any
40 foreign government in violation of the laws there enforced, if under
41 the laws of such foreign government any penalty or forfeiture is pro-

vided for violation of the laws of the United States respecting the customs revenue, and any citizen of or person domiciled in or any corporation incorporated in, the United States, controlling or substantially participating in the control of any such vessel, directly or indirectly, whether through ownership or corporate shares or otherwise, and allowing the employment of such vessel for any such purpose, and any person found, or discovered to have been, on board of any such vessel so employed and participating or assisting in any such purpose, shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.

(2) Any person who hires out or charters a vessel having knowledge or reasonable grounds for belief that the lessee or person chartering the vessel intends to employ such vessel for any of the purposes described in subsection (a) of this section and if such vessel is, during the time such lease or charter is in effect, employed for any such purpose, such person shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.

(c) Whoever, within the jurisdiction of the United States, with intent to deceive or mislead, wears any Naval, military, police, or other official uniform decoration or regalia of any foreign state or government with which the United States is at peace or anything so nearly resembling such uniform as to be calculated to deceive shall be guilty of a violation, except that the maximum fine shall be \$250.

(d) Any person within the United States who knowingly uses as a trademark, commercial label, or a portion thereof, or as an advertisement or insignia for any business or organization or any trade or commercial purpose, the code of arms of the Swiss Confederation, consisting of an upright white cross with equal arms and lines on a red ground, or any simulation thereof, shall be guilty of a violation, except that the maximum fine shall be \$250. However, it shall be a defense to any action under this section that the use of any such design or insignia was lawful on August 31, 1948.

(e) Whoever, within the United States, purchases or sells the bonds, securities, or other obligations of any foreign government or political subdivision thereof or any organization or association acting for or on behalf of such foreign government or political subdivision thereof, issued after April 13, 1934, or makes any loan to such foreign government, political subdivision, organization, or association, which is in default in payment of its obligation, or any part thereof, to the United States, shall be guilty of a Class E felony, except that the maximum fine shall be \$10,000. This section is applicable to individuals,

1 partnerships, corporations, or associations other than public corpora-
2 tions created by or pursuant to special authorizations of Congress or
3 corporations in which the United States has or exercises a controlling
4 interest through stock ownership or otherwise. While any foreign
5 government is a member of both the International Monetary Fund
6 and of the International Bank for Reconstruction and Development,
7 this section shall not apply to the sale or purchase of bonds, securities,
8 or other obligations of such government or any political subdivision
9 thereof or of any organization or association acting for or on behalf
10 of such government or political subdivision or to making any loan
11 to such government, political subdivision, organization, or association.

12 (f) A citizen or subject of any country engaged in war with a
13 country with which the United States is at war may enlist or enter
14 himself in the service of the country of which he is a citizen or subject.
15 Enlistments under this subsection shall be under regulations prescribed
16 by the Secretary of the Army.

17 (g) Whoever, within the United States, increases or augments the
18 force of any ship, or cruiser, or other armed vessel, which at the time
19 of her arrival within the United States was a ship of war, or cruiser,
20 or armed vessel, in the service of any foreign country, or of any
21 colony, district, or people, or belong to the subjects or citizens of any
22 such country, colony, district, or people, the same being at war
23 with any foreign country, or of any colony, district, or people with
24 whom the United States is at peace, by adding to the number of
25 guns of such vessel, or by changing those on board of her for guns
26 of a larger calibre, or by adding thereto any equipment solely ap-
27 plicable to war, shall be guilty of a Class E felony, except that the
28 maximum fine shall be \$1,000.

29 (h) Whoever, within the United States, furnishes, puts out, or arms
30 any vessel, with intent that such vessel shall be employed in the
31 service of any foreign country, or of any colony, district, or people,
32 to cruise or commit hostilities against subjects, citizens, or property
33 of any foreign country, or of any colony, district, or people with
34 whom the United States is at peace; or whoever issues or delivers a
35 commission within the United States for any vessel with the intent
36 that she may be so employed shall be guilty of a Class E felony, ex-
37 cept that the maximum fine shall be \$10,000. Every such vessel, or
38 tackle, apparel, and furniture, together with all materials, arms,
39 ammunition, and stores which may have been procured for the build-
40 ing and equipment thereof, shall be forfeited one-half to the use of
41 the informer and the other half to the use of the United States.

1 (i) During a war in which the United States is a neutral nation,
2 the President or any person authorized by him, may detain any armed
3 vessel owned, wholly or in part, by citizens of the United States, or
4 any vessel, domestic or foreign (other than one which has entered
5 the United States as a public vessel) which is manifestly built for
6 warlike purposes or has been converted or adapted from a private
7 vessel to one suitable for warlike use, until the owner or master, or
8 person having charge of such vessel, shall furnish proof satisfactory
9 to the President, or to the person authorized by him, that the vessel
10 will not be employed to cruise against or commit or attempt to commit
11 hostilities on the subjects, citizens, or property of any foreign prince
12 or state, or on any colony, district, or people with which the United
13 States is at peace and that said vessel will not be sold or delivered to
14 any belligerent nation or to an agent, officer, or citizen of such nation
15 by them or any of them, within the jurisdiction of the United States
16 or upon the high seas. Any vessel built or converted in violation of
17 this section, together with her tackle, apparel, furniture, equipment,
18 and cargo shall be forfeited to the United States.

19 (j) During a war in which the United States is a neutral nation,
20 no person shall knowingly cause the departure from the United States
21 of any vessel built, armed, or equipped as a vessel of war or to con-
22 vert a private vessel into a vessel of war, with any intent or under
23 any agreement or contract that such vessel will be delivered to a
24 belligerent nation, or to an agent, officer, or citizen of such nation, or
25 with reasonable cause to believe that the said vessel will be employed
26 in the service of any such belligerent nation after its departure from
27 the jurisdiction of the United States. Any vessel built, armed, equipped,
28 or converted in violation of this section, together with her tackle, ap-
29 parel, furniture, equipment, and cargo shall be forfeited to the United
30 States.

31 (k) (1) During any war in which the United States is a neutral na-
32 tion, clearance may not be issued to vessels bound to foreign ports un-
33 til the master or person having charge or command of any such vessel,
34 domestic or foreign, whether requiring clearance or not, before de-
35 parture of such vessel from port shall, in addition to the facts required
36 by sections 4197, 4200, and 4198, Revised Statutes, as amended (46
37 U.S.C. 91, 92, and 94), to be set out in the masters' and shippers' mani-
38 fest before clearance will be issued to vessels bound to foreign ports,
39 delivered to the collector of customs for the district wherein such ves-
40 sel has been located a statement, verified by oath, that the cargo or any

1 part of the cargo is or is not to be delivered to other vessels in port or
2 to be transshipped on the high seas, and, if it is to be so delivered or
3 transshipped, stating the kind and quantities and the value of the
4 total quantity of each kind of article to be delivered or transshipped,
5 and the name of the person or corporation, vessel, or government to
6 whom the delivery or transshipment is to be made; and the owners,
7 shippers, or consignors of the cargo of such vessel shall in the same
8 manner and under the same conditions deliver to the collector like
9 statements under oath as to the cargo or parts thereof laden or shipped
10 by them respectively.

11 (2) Whenever it appears that the vessel is not entitled to clearance
12 or whenever there is reasonable cause to believe that the additional
13 statements under oath required in section 311 of this Act are false, the
14 collector of customs for the district in which the vessel is located may,
15 subject to review by the head of the department or agency charged
16 with the administration of laws relating to clearance of vessels, refuse
17 clearance to any vessel, domestic or foreign, and by formal notice
18 served upon the owners, masters, or person or persons in command or
19 charge of any domestic vessel for which clearance is not required by
20 law, forbid the departure of the vessel from the port or from the
21 United States.

22 (3) Any vessel departing from a port or from the United States in
23 violation of paragraph (1) or (2), her tackle, apparel, furniture,
24 equipment, and her cargo shall be forfeited to the United States.

25 (1)(1) During a war in which the United States is a neutral na-
26 tion, the President, or any person authorized by him, may withhold
27 clearance from or to any vessel, domestic or foreign, or by service of
28 formal notice upon the owner, master, or person in command or in
29 charge of any domestic vessel not required to secure clearances, may
30 forbid its departure from port or from the United States, whenever
31 there is reasonable cause to believe that such vessel is about to carry
32 fuel, arms, ammunition, men, supplies, dispatches, or information to
33 any war ship, tender, or supply ship of a foreign belligerent nation in
34 violation of the laws, treaties, or obligations of the United States un-
35 der the law of nations.

36 (2) Any vessel departing from port or from the United States, in
37 violation of paragraph (1), her tackle, apparel, furniture, equipment,
38 and her cargo shall be forfeited to the United States.

39 (m)(1) Whoever, being subject to the authority of the United
40 States, gives, sells, or otherwise supplies any arms, ammunition, ex-
41 plosive substance, intoxicating liquor, or opium to any aboriginal na-

tive of any of the Pacific Islands lying within the twentieth parallel of north latitude and the fortieth parallel south latitude and the one hundred and twentieth meridian of longitude west and one hundred and twentieth meridian of longitude east of Greenwich, not being in the possession or under the protection of any civilized power, shall be guilty of a misdemeanor, except that the maximum prison term shall be three months and the maximum fine shall be \$50. In addition, all articles of a similar nature to those in respect to which the offense has been committed, found in the possession of the offender, may be declared forfeited.

(2) It shall be a defense to any action under this section that any such opium, wine, or spirits have been given bona fide for medical purposes.

(n) Whoever knowingly uses any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating such passport shall be guilty of a Class D felony, except that the maximum fine shall be \$2,000.

(o) Whoever uses any passport in violation of the conditions or restrictions therein contained or the rules prescribed pursuant to the laws regulating the issuance of passports shall be guilty of a Class D felony, except that the maximum fine shall be \$2,000.

(p) Whoever violates any safe conduct or passport duly obtained and issued under authority of the United States shall be guilty of a Class E felony, except that the maximum fine shall be \$2,000.

PART S—TITLE 24, U.S.C., AMENDMENTS

SEC. 338. (a) Section 4822 of the Revised Statutes is amended by deleting "The benefits" and inserting in lieu thereof "Subject to the provisions of section 1-4A3 of title 18, United States Code, the benefits".

(b) Section 4 of the Act of March 22, 1906 (24 U.S.C. 154), is amended (1) by deleting "who shall unlawfully intrude upon said reserve, or who shall without permission appropriate any object therein or commit unauthorized injury or waste in any form whatever upon the lands or other public property therein, or"; and (2) by deleting "fine in a sum not more than \$1,000, or be imprisoned for a period not more than twelve months, or shall suffer both fine and imprisonment, in the discretion of the court." and inserting in lieu thereof "guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$1,000."

(c) Section 4881 of the Revised Statutes (24 U.S.C. 286) is amended to read as follows:

1 “SEC. 4881. The superintendent in charge of any national ceme-
2 tery is authorized to arrest forthwith any person engaged in commit-
3 ting any violation under section 2-8B6 or 2-8D3 of title 18, United
4 States Code, involving the destruction, mutilation, defacing, injuring
5 or removal of any monument, gravestone, or other structure, or the
6 destruction, cutting, breaking, injuring or removal of any tree, shrub,
7 or plant within the limits of any national cemetery, and to bring such
8 person before any United States magistrate or judge of any United
9 States district court within any State or district where any of the
10 cemeteries are situated, for the purpose of holding such person to
11 answer for such violation, and then and there to make complaint in
12 due form.”.

13 PART T—TITLE 25, U.S.C., AMENDMENTS

14 SEC. 339. (a) Section 3(c) of the Act of August 13, 1946 (25 U.S.C.
15 70b(c)), is amended by deleting “fined not more than \$10,000 or im-
16 prisoned not more than two years, or both.” and inserting in lieu
17 thereof “guilty of a Class E felony, except that the maximum fine
18 shall be \$10,000.”

19 (b) Section 2124 of the Revised Statutes (25 U.S.C. 201), is
20 amended (1) by deleting “arrested or”, and (2) by deleting “prosecu-
21 tion” and inserting “action”.

22 (c) Section 5 of the Act of June 25, 1910 (25 U.S.C. 202), is
23 amended by deleting “misdemeanor, and upon conviction shall be
24 punished by a fine not exceeding \$500 for the first offense, and if con-
25 victed for a second offense may be punished by a fine not exceeding
26 \$500 or imprisonment not exceeding one year, or by both such fine and
27 imprisonment, in the discretion of the court.” and inserting in lieu
28 thereof “regulatory offense under section 2-8F6 of title 18, United
29 States Code, except that for the first conviction of such offense the
30 maximum fine shall be \$500, and for a second or subsequent such con-
31 viction, the maximum fine shall be \$1,000.”

32 (d) The fifteenth paragraph of section 26 of the Act of June 30,
33 1919 (25 U.S.C. 399), is amended by deleting “; and any person mak-
34 ing any false statement, representation, or report under oath shall be
35 subject to punishment as for perjury”.

36 (e) Section 403(a) of the Act of April 11, 1968 (25 U.S.C. 1323), is
37 amended by deleting “section 1162 of title 18,” and inserting in lieu
38 thereof “section 340(n) of the Indian Affairs Crimes Act of 1973.”

39 (f) Sections 2103 and 2104 of the Revised Statutes (25 U.S.C. 81
40 and 82) are each amended by adding the following sentence at the end
41 thereof: “Whoever receives money contrary to this section shall be

guilty of a misdemeanor, except that the maximum fine shall be \$1,000; and such money so received shall be forfeited.”.

SEC. 340. (a) This section may be cited as the “Indian Affairs Crimes Act of 1973”.

(b) (1) INDIAN CONTRACTS FOR GOODS AND SUPPLIES.—Whoever, being an officer, employee, or agent of the United States or any department or agency thereof, has any interest, direct or indirect, in any contract made or under negotiation, with the Government or with the Indians, for the purchase or transportation or delivery of goods or supplies for the Indians, or for the removal of the Indians, or colludes with any person attempting to obtain such contract, shall be guilty of a misdemeanor, except that the maximum fine shall be \$5,000.

(2) INDIAN ENROLLMENT CONTRACTS.—Unless the United States consents, all contracts made with any person or persons, applicants for enrollment as citizens in the Five Civilized Tribes for compensation for services in relation thereto, shall be void, and—

Whoever collects or receives any moneys from any such applicants for citizenship, shall be guilty of a misdemeanor, except that the maximum fine shall be \$500.

(c) INDIAN COUNTRY DEFINED.—Except as otherwise provided in subsection (h), the term “Indian country” as used in this section means—

(1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) all Indian allotments, the Indian title to which has not been extinguished, including rights-of-way running through the same.

(d) (1) LAWS GOVERNING.—Except as otherwise expressly provided, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

(2) This subsection shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been

1 punished by the local law of the tribe, or to any case where, by treaty
2 stipulations, the exclusive jurisdiction over such offenses is or may be
3 secured to the Indian tribes respectively.

4 (e) OFFENSE COMMITTED WITHIN INDIAN COUNTRY.—(1) Federal ju-
5 risdiction exists over the following offenses under Title 18, United
6 States Code, if committed within Indian country:

- 7 (i) 2-7B1 (Murder);
- 8 (ii) 2-7B2 (Reckless Homicide);
- 9 (iii) 2-7B3 (Manslaughter);
- 10 (iv) 2-7B4 (Criminally Negligent Homicide);
- 11 (v) 2-7E1 (Rape);
- 12 (vi) 2-7E2 (Statutory Rape);
- 13 (vii) 2-7C1 (Maiming);
- 14 (viii) 2-7C2 (Aggravated Assault);
- 15 (ix) 2-8B1 (Aggravated Arson);
- 16 (x) 2-8B2 (Arson);
- 17 (xi) 2-8B4 (Failure to Control or Report Dangerous Fire);
- 18 (xii) 2-8B5 (Aggravated Malicious Mischief);
- 19 (xiii) 2-8B6 (Malicious Mischief);
- 20 (xiv) 2-8C1 (Armed Burglary);
- 21 (xv) 2-9C2 (Burglary);
- 22 (xvi) 2-8D1 (Armed Robbery);
- 23 (xvii) 2-8D2 (Robbery); and
- 24 (xviii) 2-8D3 (Theft).

25 (2) Where Federal jurisdiction exists to prosecute the offenses des-
26 ignated in paragraph (1), Federal jurisdiction exists to convict for
27 any designated lesser included offense. The existence of such jurisdic-
28 tion shall not be exclusive.

29 (f) INTOXICANTS DISPENSED IN INDIAN COUNTRY.—Whoever sells,
30 gives away, disposes of, exchanges, or barter any malt, spirituous,
31 or vinous liquor, including beer, ale, and wine, or any ardent or
32 other intoxicating liquor of any kind whatsoever, except if the
33 aforementioned items were for scientific, sacramental, medicinal, or
34 mechanical purposes, or any essence, extract, bitters, preparation, com-
35 pound, composition, or any article whatsoever, under any name, label,
36 or brand, which produces intoxication, to any Indian to whom an al-
37 lotment of land has been made while the title to the same shall be held
38 in trust by the Government, or to any Indian who is a ward of the
39 Government under charge of any Indian superintendent, or to any
40 Indian, including mixed bloods, over whom the Government, through
41 its departments, exercises guardianship, and whoever introduces any

1 malt, spirituous, or vinous liquor, including beer, ale, and wine, or
2 any ardent or intoxicating liquor of any kind whatsoever into the
3 Indian country, shall, for the first offense, be guilty of a Class E
4 felony, except that the maximum fine shall be \$500. For each subse-
5 quent offense, such offender shall be guilty of a Class E felony, except
6 that the maximum fine shall be \$2,000.

7 (g) INTOXICANTS CONTINUED.—It shall be a sufficient defense to any
8 charge of introducing or attempting to introduce ardent spirits, ale,
9 beer, wine, or intoxicating liquors into the Indian country that the
10 aforementioned items were for scientific, sacramental, medicinal, or
11 mechanical purposes, or that the acts charged were done under author-
12 ity, in writing, from the Department of the Army or any officer duly
13 authorized thereunto by the Department of the Army, but this sub-
14 section shall not bar the prosecution of any officer, soldier, sutler or
15 storekeeper, attaché, or employee of the Army of the United States
16 who barter, donate, or furnishes in any manner whatsoever liquors,
17 beer, or any intoxicating beverage whatsoever to any Indian.

18 (h) INTOXICANTS CONTINUED.—The term “Indian country” as used
19 in subsections (f), (g), (j) and (k) does not include fee-patented lands
20 in non-Indian communities or rights-of-way through Indian reser-
21 vations, and this subsection does not apply to such lands or rights-
22 of-way in the absence of a treaty or statute extending the Indian
23 liquor laws thereto.

24 (i) INTOXICANTS DISPENSED ON SCHOOL SITE.—Whoever, on any tract
25 of land in the former Indian country upon which is located any Indian
26 school maintained by or under the supervision of the United States,
27 manufactures, sells, gives away, or in any manner, or by any means
28 furnishes to anyone, either for himself or another, any vinous, malt,
29 or fermented liquors, or any other intoxicating drinks of any kind
30 whatsoever, whether medicated or not, or who carries, or in any man-
31 ner has carried, into such area any such liquors or drinks, or who shall
32 be interested in such manufacture, sale, giving away, furnishing to
33 anyone, or carrying into such area any of such liquors or drinks, shall
34 be guilty of a Class E felony, except that the maximum fine shall be
35 \$500. It shall be a defense to any prosecution under this section that
36 the aforementioned items were for scientific, sacramental, medicinal,
37 or mechanical purposes.

38 (j) INTOXICANTS POSSESSED UNLAWFULLY.—Whoever possesses in-
39 toxicating liquors in the Indian country or where the introduction is
40 prohibited by treaty or an Act of Congress, shall, for the first offense,
41 be guilty of a Class E felony, except that the maximum fine shall be

1 \$500. For each such subsequent offense, the offender shall be guilty
2 of a Class E felony, except that the maximum fine shall be \$2,000.

3 (k) It shall be an affirmative defense to any prosecution under this
4 subsection that such liquors so possessed were for scientific, sacramental,
5 medicinal, or mechanical purposes.

6 (l) COUNTERFEITING INDIAN ARTS AND CRAFTS BOARD TRADE-
7 MARKS.—Whoever, colorably imitates any Government trade mark
8 used or devised by the Indian Arts and Crafts Board in the Depart-
9 ment of the Interior as provided in section 305a, Title 25 U.S.C., or,
10 except as authorized by the Board, affixes any Government trade mark
11 upon any products, or to any labels, signs, prints, packages, wrappers,
12 or receptacles intended to be used upon or in connection with the
13 sale of such products shall be guilty of a misdemeanor, except that the
14 maximum fine shall be \$500, and shall be enjoined from further carry-
15 ing on the act or acts complained of.

16 (m) MISREPRESENTATION IN SALE OF PRODUCTS.—Whoever know-
17 ingly offers or displays for sale any goods, with or without any Govern-
18 ment trade mark, as Indian products or Indian products of a par-
19 ticular Indian tribe or group, resident within the United States, when
20 such person knows such goods are not Indian products or are not
21 Indian products of the particular Indian tribe or group, shall be
22 guilty of a misdemeanor, except that the maximum fine shall be \$500.

23 (n) PROPERTY DAMAGE IN COMMITTING OFFENSE.—Whenever a non-
24 Indian person, in the commission of an offense within the Indian
25 country takes, injures, or destroys the property of any friendly In-
26 dian the judgment of conviction shall include a sentence that the de-
27 fendent pay to the Indian owner a sum equal to twice the just value
28 of the property so taken, injured, or destroyed.

29 (o) PROPERTY DAMAGE CONTINUED.—If such offender under sub-
30 section (n) shall be unable to pay a sum at least equal to the just
31 value or amount, whatever such payment shall fall short of the same
32 shall be paid out of the Treasury of the United States. If such offender
33 cannot be apprehended and brought to trial, the amount of such prop-
34 erty shall be paid out of the Treasury. But no Indian shall be entitled
35 to any payment out of the Treasury of the United States, for any such
36 property, if he, or any of the nation to which he belongs, have sought
37 private revenge, or have attempted to obtain satisfaction by any force
38 or violence.

39 (p) APPLICATION OF INDIAN LIQUOR LAWS.—The provisions of sub-
40 sections (f-h), (j-k), (u), (z) and (aa) of this section shall not apply
41 apply within any area that is not Indian country provided such act

or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

(q)(1) STATE JURISDICTION OVER OFFENSES COMMITTED BY OR AGAINST INDIANS IN THE INDIAN COUNTRY.—(1) Each of the States listed in the following table shall have jurisdiction over offense committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

STATE	INDIAN COUNTRY AFFECTED
Alaska -----	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California -----	All Indian country within the State.
Minnesota -----	All Indian country within the State, except the Red Lake Reservation.
Nebraska -----	All Indian country within the State.
Oregon -----	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin -----	All Indian country within the State.

(2) Nothing in this subsection shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(3) The provisions of subsections (d) and (e) shall not be applicable within the areas of Indian country listed in paragraph (1) of this subsection as areas over which the several States have exclusive jurisdiction.

1 (r) DESTROYING BOUNDARY AND WARNING SIGNS.—Whoever will-
2 fully destroys, defaces, or removes any sign erected by an Indian
3 tribe:

4 (1) to indicate the boundary of an Indian reservation or of any
5 Indian country as defined in subsection (c) or

6 (2) to give notice that hunting, trapping, or fishing is not per-
7 mitted thereon without lawful authority or permission bring to margin
8 shall be guilty of a misdemeanor, except that the maximum fine shall
9 be \$250.

10 (s) HUNTING, TRAPPING OR FISHING ON INDIAN LAND.—Whoever,
11 without lawful authority or permission, knowingly goes upon any
12 land that belongs to any Indian or Indian tribe, band, or group and
13 either are held by the United States in trust or are subject to a restric-
14 tion against alienation imposed by the United States, for the purpose
15 of hunting, trapping, or fishing thereon, or for the removal of game,
16 peltries, or fish therefrom, shall be guilty of a misdemeanor, except
17 that the maximum fine shall be \$200, and all game, fish, and peltries in
18 his possession shall be forfeited.

19 (t) LIQUOR VIOLATIONS IN INDIAN COUNTRY.—If any superin-
20 tendent of Indian affairs, or commanding officer of a military post,
21 or special agent of the Office of Indian Affairs for the suppression of
22 liquor traffic among Indians and in the Indian country and any au-
23 thorized deputies under his supervision has probable cause to believe
24 that any person is about to introduce or has introduced any spirituous
25 liquor, beer, wine, or other intoxicating liquors named in subsections
26 (h) or (j-k) of this section into the Indian country in violation of
27 law, he may cause the places, conveyances, and packages of such per-
28 son to be searched. If any such intoxicating liquor is found therein,
29 the same, together with such conveyances and packages of such person,
30 shall be seized and delivered to the proper officer, and shall be proceed-
31 ed against by libel in the proper court, and forfeited, one-half to the
32 informer and one-half to the use of the United States. If such person
33 be a trader, his license shall be revoked and his bond put in suit.

34 (u) LIQUOR VIOLATIONS CONTINUED.—Any person in the service of
35 the United States authorized by this subsection to make searches and
36 seizures, or any Indian may take and destroy any ardent spirits or
37 wine found in the Indian country, except such as are kept or used for
38 scientific, sacramental, medicinal, or mechanical purposes or such as
39 may be introduced therein by the Department of the Army.

40 (v) LIQUOR VIOLATIONS CONTINUED.—In all cases arising under sub-

1 sections (f-h), (j-k) and (aa) of this section, Indians shall be
2 competent witnesses.

3 (w) JURISDICTION OF STATE OF KANSAS ON INDIAN RESERVATIONS.—
4 Jurisdiction is conferred on the State of Kansas over offenses com-
5 mitted by or against Indians on Indian reservations, including
6 trust or restricted allotments, within the State of Kansas, to the same
7 extent as its courts have jurisdiction over offenses committed elsewhere
8 within the State in accordance with the laws of the State.

9 (x) JURISDICTION OF STATE OF KANSAS CONTINUED.—Subsection (w)
10 of this section shall not deprive the courts of the United States of
11 jurisdiction over offenses defined by the laws of the United States
12 committed by or against Indians on Indian reservations.

13 (y) INTOXICATING LIQUOR AS EVIDENCE OF INTRODUCTION.—The pos-
14 session by a person of intoxicating liquors in Indian country where
15 the introduction is prohibited by treaty or Federal statute shall be
16 prima facie evidence of unlawful introduction.

17 (z) OFFICERS POWER TO SUPPRESS LIQUOR TRAFFIC.—The chief spe-
18 cial officer for the suppression of the liquor traffic among Indians and
19 duly appointed officers working under his supervision whose appoint-
20 ments are made or affirmed by the Commissioner of Indian Affairs
21 or the Secretary of the Interior may execute all warrants of arrest and
22 other lawful precepts issued under the authority of the United States
23 and in the execution of his duty he may command all necessary
24 assistance.

25 (aa) CONVEYANCES CARRYING LIQUOR.—Any conveyance, whether
26 used by the owner or another in introducing or attempting to intro-
27 duce intoxicants into the Indian country, or into other places where
28 the introduction is prohibited by treaty or enactment of Congress,
29 shall be subject to seizure, libel and forfeiture.

30 (bb) DISPOSITION OF CONVEYANCES SEIZED FOR VIOLATIONS OF THE
31 INDIAN LIQUOR LAWS.—The provisions of subsection (aa) shall apply
32 to any conveyances seized, proceeded against by libel, or forfeited
33 under the provisions of subsection (t) or (aa) for having been used
34 in introducing or attempting to introduce intoxicants into the Indian
35 country or into other places where such introduction is prohibited
36 by treaty or enactment of Congress.

37 PART U—TITLE 26, U.S.C., AMENDMENTS

38 SEC. 341. (a) Except as otherwise expressly provided, wherever in
39 this section an amendment is expressed in terms of an amendment to
40 a section or other provision, the reference is to a section or other pro-
41 vision of the Internal Revenue Code of 1954.

1 (b) (1) Section 4817 (7) is amended by striking out—

2 (A) “, firm, or corporation”;

3 (B) “forge, counterfeit, simulate,”; and

4 (C) “alter,”.

5 (2) Subsections (e) and (h) of section 4918 are each amended by
6 striking out “perjury” and inserting “false statement”.

7 (3) The second sentence of section 5203 (b) is amended by inserting
8 “as is authorized by chapter 3 of title 18, United States Code and”
9 after “such force”.

10 (4) Section 5551 (b) is amended to read as follows: “The Secretary
11 or any officer designated by him may disapprove any such bond or
12 bonds if he finds that the individual, firm, partnership, or corporation,
13 or association giving such bond or bonds, or owning, controlling, or
14 actively participating in the management of the business of the indi-
15 vidual, firm, partnership, corporation, or association giving such bond
16 or bonds is unfit. Unfitness includes previous conviction, in a court of
17 competent jurisdiction, of—

18 “(1) any fraudulent noncompliance with any provision of any
19 law of the United States, if such provision related to internal
20 revenue or customs taxation of distilled spirits, wines, or beer, or
21 if such an offense shall have been compromised with the individ-
22 ual, firm, partnership, corporation, or association on payment of
23 penalties or otherwise, or

24 “(2) any felony under a law of any State, Territory, or the
25 District of Columbia, or the United States, prohibiting the manu-
26 facture, sale, importation, or transportation of distilled spirits,
27 wine, beer or other intoxicating liquor.”

28 (5) The last sentence of section 5557 (a) is amended by striking out
29 “section 3041” and inserting “section 3-11B1”.

30 (6) Section 5601 is amended by—

31 (A) striking out paragraph (2) of subsection (a);

32 (B) striking out paragraph (6) of subsection (a);

33 (C) striking out paragraph (8) of subsection (a);

34 (D) striking out paragraph (10) of subsection (a);

35 (E) redesignating the remaining paragraphs in subsection (a)
36 appropriately; and

37 (F) striking paragraphs (2) and (4) of subsection (b) and
38 redesignating paragraph (3) of such subsection as paragraph (2).

39 (7) Section 5602 is amended to read as follows:

40 “§ 5602. Penalty for tax fraud for distiller

1 “No discontinuance or nolle prosequi of any prosecution of a dis-
2 tiller for a Class C felony under section 2-6G3 of title 18, United
3 States Code, shall be allowed without the permission in writing of the
4 Attorney General.

5 (8) Section 5608 is amended to read as follows:

6 **“§ 5603. Penalty relating to records, returns, and reports**

7 “Any person required by this chapter (other than subchapters (F)
8 and (G)) or regulations issued thereunder to keep on file any records,
9 returns, reports, summary, transcript, or other document who shall—

10 “(1) fail to keep any such document or to make required entries
11 therein,

12 “(2) make any false entry in such document,

13 “(3) cancel, alter, or obliterate any such part in such document
14 or any entry therein, or destroy any part of such document or
15 any entry therein except as provided by this title or regulation
16 issued pursuant thereto, or

17 “(4) fail or refuse to preserve or produce any such document,
18 as required by this chapter or regulations issued pursuant thereto,
19 shall be guilty of a Class E felony, except that the maximum fine shall
20 be \$1,000 for each such offense. Such documents shall be subject, in
21 addition, to the provisions of section 2-6D3 of title 18, United States
22 Code.”

23 (9) Section 5604(a) is amended by—

24 (A) striking paragraph (1);

25 (B) striking in paragraph (2) “with intent to defraud the
26 United States,”;

27 (C) striking paragraph (4);

28 (D) striking in paragraph (6) “with intent to defraud the
29 United States,”;

30 (E) striking paragraphs (10) and (14);

31 (F) striking in paragraph (17) “with intent to defraud the
32 United States,”;

33 (G) striking paragraph (19); and

34 (H) redesignating the remaining paragraphs as paragraphs
35 (1) through (14) respectively.

36 (10) Section 5605 is amended by striking “and any officer, director,
37 or agent of any such person who knowingly participates in such
38 violation,”.

39 (11) Section 5606 is amended by striking “and any officer, director,
40 or agent of any corporation who knowingly participates in such
41 violation,”.

1 (12) Section 5607 is amended by striking out all matter after the
2 semicolon in paragraph (4) and inserting in lieu thereof “thereby
3 renders such distilled spirits taxable objects, as defined in section
4 1409(f) of title 18.

5 (13) Section 5608(a) is amended to read as follows:

6 “(a) **FORFEITURE OF SHIP OR VESSEL.**—The ship or vessel on board
7 of which there is shipped, or shipment is pretended to be made of,
8 distilled spirits fraudulently changed in connection with a fraudulent
9 drawback claim shall be forfeited to the United States, without regard
10 to whether the master or owner of the ship or vessel is convicted of an
11 offense in connection with the fraudulent drawback claim. Proceedings
12 may be had in admiralty by libel for the forfeiture.”

13 (14) Section 5608(b) is amended by striking “, with intent to
14 defraud the United States,”.

15 (15) Section 5661(a) is amended by striking “, with intent to de-
16 fraud the United States,”.

17 (16) Section 5661(b) is amended by—

18 (A) striking “otherwise than with intent to defraud the
19 United States”; and

20 (B) striking “or who aids or abets in any such violation,”.

21 (17) Section 5662 is amended by striking “fined not more than
22 \$1,000, or imprisoned not more than 1 year, or both,” and inserting
23 “guilty of a Class E felony.”.

24 (18) Section 5671 is amended by striking out “, shall be fined not
25 more than \$5,000, or imprisoned not more than 5 years, or both, for
26 each such offense, and”.

27 (19) Section 5672 is amended by—

28 (A) striking “, otherwise than with intent to defraud the
29 United States,”;

30 (B) inserting “informational” before “returns”; and

31 (C) striking “fined not more than \$1,000, or imprisoned for
32 not more than one year, or both,” and inserting “guilty of a class
33 E felony”.

34 (20) Section 5674 is amended by—

35 (A) striking “or in any way aids in the removal from any
36 brewery beer of” and inserting “beer from any brewery”; and

37 (B) striking out “fined not more than \$1,000, or imprisoned
38 not more than one year, or both,” and inserting “guilty of a
39 misdemeanor”.

40 (21) Section 5675 is amended by striking out “shall be liable to a
41 penalty of” and inserting “shall be guilty of a violation, except that
42 the maximum fine shall be”.

(22) Section 5676 is amended by—

(A) amending paragraph (1) by—

(i) striking “, or in any way aids in the sale, removal, resale or purchase of,”; and

(ii) striking “fined not more than \$1,000, or imprisoned for not more than one year, or both” and inserting “guilty of a misdemeanor”;

(B) amending paragraph (2) by—

(i) striking “or aids in the withdrawal of” wherever it appears; and

(ii) striking “fined not more than \$1,000, or imprisoned for not more than one year, or both” and inserting “guilty of a misdemeanor”;

(C) amending paragraph (3) to read as follows:

“(3) Penalty for removing stamps or devices.—Every person who removes from any hogshead, barrel, keg, or other container of beer any stamp or device required by regulations issued pursuant to section 5054, with intent to reuse such stamp or device, shall be guilty of a Class E felony”; and

(D) amending paragraph (5) by—

(i) striking “alters,”;

(ii) striking “liable to a fine of not more than” and inserting “guilty of an violation, except that the fine shall not exceed”; and

(iii) striking “altered,”.

(23) Section 5681 is amended by—

(A) striking subsection (a) and (d) and redesignating subsections (b) and (c) as (a) and (b), respectively;

(B) amending subsections (a) and (b), as redesignated by paragraph (A), by striking in each subsection “fined not more than \$1,000, or imprisoned not more than 1 year, or both” and inserting “guilty of a Class E felony and sentenced in accordance with the provisions of chapter 4 of title 18, United States Code”.

(24) Section 5682 is amended by striking “fined not more than \$5,000, or imprisoned not more than 3 years, or both” and inserting “guilty of a Class E felony, except that the maximum fine shall be \$5,000”.

(25) Section 5683 is amended by striking “or causes such act to be done, he shall be fined not more than \$1,000, or imprisoned not more than 1 year” and inserting “he shall be guilty of a Class E felony”.

(26) Section 5686 is repealed.

1 (27) Section 5687 is amended by striking “fined not more than
2 \$1,000, or imprisoned not more than 1 year, or both, for each such
3 offense” and inserting “guilty of a regulatory offense under section
4 2-8F6 of title 18, United States Code”.

5 (28) Section 5689 is amended by striking “shall be fined not more
6 than \$10,000, or imprisoned not more than 5 years, or both, and” and
7 inserting “shall forfeit”. Such section is further amended by striking
8 out “shall be forfeited”, and by inserting “such machine, device, equip-
9 ment, or materials” after “condemnation”.

10 (29) Section 5691 (a) is amended by striking out “fined not more
11 than \$5,000, or imprisoned not more than 2 years, or both, for each
12 such offense” and inserting “guilty of a Class E felony, except that the
13 maximum fine shall be \$5,000”.

14 (30) Section 5691 (b) is amended by striking out the second sen-
15 tence thereof and by inserting before the period in the first sentence
16 thereof the following: “, unless the sale or offer of sale was made to a
17 person other than a dealer, as defined in section 5112 (a)”.

18 (31) Section 5762 (a) is amended by—

19 (A) striking “, with intent to defraud the United States”;

20 (B) striking “or attempts in any manner to evade or defeat the
21 tax or the payment thereof” in paragraph (3); and

22 (C) striking “or counterfeit” in paragraph (6).

23 (32) Section 5762(b) is amended to read as follows:

24 “(b) OTHER PENALTIES.—Records, returns, reports, and other docu-
25 ments referred to in subsection (a) are governments records within the
26 meaning of that term in section 2-6D3 of title 18, United States Code.
27 Unless a greater penalty is explicitly provided under a particular pro-
28 vision, whoever violates any provision of this chapter or any regula-
29 tion issued thereunder shall be guilty of a Class E felony.”

30 (33) Section 5861 is amended to read as follows:

31 “§ 5861. Prohibited acts.

32 “(a) POSSESSION.—

33 “(1) OFFENSE.—It shall be unlawful for any person—

34 “(A) to possess a firearm transferred to him in violation
35 of the provisions of this chapter;

36 “(B) to possess a firearm made in violation of the provi-
37 sions of this chapter;

38 “(C) to possess a firearm which is not registered to him in
39 the National Firearms Registration and Transfers Record;

40 “(D) to possess a firearm having the serial number or

other identification required by this chapter obliterated, removed, changed, or altered;

“(E) to possess a firearm which is not identified by a serial number as required by this chapter;

“(F) to possess a firearm which has been imported or brought into the United States in violation of section 5844;

“(G) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter; or

“(H) to make a false entry on any record required by this chapter knowing such entry to be false.

“(2) PENALTY.—Violation of any provision of this subsection is a Class E felony.

“(b) UNTAXED OR UNREGISTERED MANUFACTURING, IMPORTING, OR DEALING; TRANSFER, DELIVERY, ET CETERA.—

“(1) OFFENSE.—It shall be unlawful for any person—

“(A) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 for his business or having registered as required by section 5802;

“(B) to receive a firearm transferred to him in violation of the provisions of this chapter;

“(C) to receive a firearm made in violation of the provisions of this chapter;

“(D) to receive a firearm which is not registered to him in the National Firearms Registration and Transfer Record;

“(E) to receive a firearm having the serial number or other identification of a firearm required by this chapter obliterated, removed, changed, or altered;

“(F) to receive a firearm which is not identified by a serial number as required by this chapter;

“(G) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter; or

“(H) to receive a firearm which has been imported or brought into the United States in violation of section 5844.

“(2) PENALTY.—Violation of the provisions of this subsection shall be punished as a violation of section 2-9D4 of title 18, United States Code as provided therein.

1 (34) Section 5871 is amended to read as follows: "Any person who
2 violates or fails to comply with any provision of this chapter shall be
3 guilty of a Class D felony, except that the maximum fine shall be
4 \$10,000."

5 (35) Section 6065 (a) is amended by striking "perjury" wherever
6 it appears therein and inserting in lieu thereof "false statement".

7 (36) Section 6531 is repealed.

8 (37) Section 6680 (a) is amended by inserting "civil" before
9 "penalty" each place it appears in paragraph (1) or (2).

10 (38) Section 6685 is amended by inserting "civil" before "penalty
11 of \$1,000".

12 (39) Section 7201 is repealed.

13 (40) Section 7202 is repealed.

14 (41) Section 7203 is amended by striking out "guilty of a mis-
15 demeanor and, upon conviction thereof shall be fined not more than
16 \$10,000, or imprisoned not more than one year, or both, together with
17 the cost of prosecution" and inserting "guilty of a Class E felony, ex-
18 cept that the maximum fine shall be \$10,000".

19 (42) Section 7204 is repealed.

20 (43) Section 7205 is amended by striking "fined not more than \$500
21 or imprisoned not more than one year, or both" and inserting "guilty of
22 a misdemeanor, except that the maximum fine shall be \$500".

23 (44) Section 7206 is repealed.

24 (45) Section 7208 is amended by—

25 (A) striking paragraph (1) and redesignating paragraphs (2)
26 through (5) as (1) through (4), respectively;

27 (B) striking paragraph (2) (C), as redesignated by subpara-
28 graph (A) of this paragraph;

29 (C) amending subparagraph (3) (C), as redesignated by sub-
30 paragraph A of this paragraph, by striking "knowingly and with-
31 out lawful excuse (the burden of proof of such excuse being on
32 the accused)" and inserting "except as authorized by law,
33 knowingly";

34 (D) amending paragraph (4), as redesignated by subpara-
35 graph A of this paragraph, by striking "to defraud the revenue,
36 or"; and

37 (E) striking out "felony and, upon conviction thereof, shall be
38 fined not more than \$10,000 or imprisoned not more than 5 years,
39 or both" and inserting "Class D felony, except that the maximum
40 fine shall be \$10,000".

1 (47) Section 7209 is amended by striking out “fined not more than
2 \$1,000 or imprisoned not more than six months, or both” and inserting
3 “guilty of a misdemeanor”.

4 (48) The text of section 7210 is amended to read as follows: “The
5 provisions of section 2–6C2 of title 18, United States Code shall apply
6 to any person required, under section 6420(e) (2), 6421(f) (2), 6424
7 (d) (2), 6427(e) (2), 7602, 7603, or 7604(b), to appear to testify or to
8 produce books, accounts, records, memoranda or other papers.”

9 (49) Section 7211 is amended by striking “misdemeanor and, upon
10 conviction thereof, shall be punished by a fine of not more than \$1,000,
11 be imprisoned for not more than one year, or both” and inserting “Class
12 E felony”.

13 (50) Section 7212 is repealed.

14 (51) Section 7213 is amended by—

15 (A) striking, in paragraph (a) (1), “return; and any person
16 committing an offense against the foregoing provision shall be
17 guilty of a misdemeanor and upon conviction thereof shall be fined
18 not more than \$1,000 or imprisoned not more than one year, or
19 both, together with the cost of prosecution; and if the offender be
20 an officer or employee of the United States he shall be dismissed
21 from office or discharged from employment.” and inserting in lieu
22 thereof “return. Any person who violates the provisions of this
23 section shall be guilty of a Class E felony, and if he is an officer or
24 employee of the United States at the time of his conviction he
25 shall be dismissed from office or discharged from employment.”;

26 (B) strike, in paragraph (a) (2), “misdemeanor, and upon con-
27 viction thereof, shall be fined not more than \$1,000 or imprisoned
28 not more than one year, or both, together with the cost of prosecu-
29 tion” and inserting “a Class E felony”;

30 (C) strike in paragraph (a) (3) “misdemeanor, and upon con-
31 viction thereof, shall be fined not more than \$1,000 or imprisoned
32 not more than one year, or both together with the cost of pros-
33 ecution” and inserting “a Class E felony”;

34 (D) by amending subsection (b) to read as follows:

35 “(b) DISCLOSURE OF OPERATIONS OF MANUFACTURER OR PRODUCER.—
36 No officer or employee of the United States shall divulge or make
37 known in any manner whatever not provided by law to any person
38 the operations, style of work, or apparatus of a manufacturer or pro-
39 ducer visited by him in the discharge of his official duties. Any per-
40 son who violates the provisions of this subsection shall be guilty of a
41 Class E felony, and if he is an officer or employee of the United States

1 at the time of his conviction he shall be dismissed from office or dis-
2 charged from employment.”;

3 (E) strike in subsection (c) “fined not more than \$1,000 or
4 imprisoned not more than one year, or both” and insert “guilty of
5 a Class E felony”.

6 (52) Section 7214 (a) and (b) are amended to read as follows:

7 “(a) UNLAWFUL ACTS OF REVENUE OFFICERS OR AGENTS.—Any
8 officer or employee of the United States acting in connection with
9 any revenue law of the United States—

10 “(1) who, with intent to defeat the application of any pro-
11 vision of this title, fails to perform any of the duties of his office
12 or employment, or who makes or signs any fraudulent entry into
13 any book, shall be guilty of a Class E felony, except that the
14 maximum fine shall be \$10,000; or

15 “(2) who knowingly demands other or greater sums than are
16 authorized by law or receives any fee, compensation or reward,
17 except as by law prescribed for the performance of any duty,
18 shall be guilty of a misdemeanor.

19 Any person convicted of a violation of this subsection who is an officer
20 or employee of the United States at the time of his conviction shall
21 be dismissed from office or discharged from employment. The court
22 may, in its discretion, award use of the fine imposed for such viola-
23 tion not exceeding one-half of such fine for the use of the informer, if
24 any, who shall be ascertained by the judgment of the court. The court
25 shall also render judgment against the person convicted by the in-
26 jured party, in favor of such party, to be collected by execution.

27 “(b) INTEREST OF INTERNAL REVENUE OFFICER OR EMPLOYEE IN
28 LIQUOR OR TOBACCO PRODUCTION.—Any Internal Revenue officer or
29 employee interested, directly or indirectly, in the manufacture of
30 tobacco, snuff, or cigarettes, or in the production, rectification, or
31 redistillation of distilled spirits, shall be dismissed from office and
32 shall be guilty of a misdemeanor.”

33 (53) (A) Section 7215 is amended to read as follows:

34 “§ 7215. Defenses with respect to collected taxes

35 “It shall be a defense to any action brought for a violation of sec-
36 tion 7512(b) to show that—

37 “(1) the defendant had reasonable doubt as to—

38 “(A) whether the law required collection of tax, or

39 “(B) who was required by law to collect tax, and

“(2) the failure to comply with the provision of section 7512

(b) was due to circumstances beyond the defendant’s control.

For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) shall not be considered to be circumstances beyond the control of the defendant.”

(B) The table of sections for part 1 of subchapter A of chapter 75 is amended by striking the item relating to section 7215 and inserting in lieu thereof the following:

“Sec. 7215. Defenses with respect to collected taxes.”

(54) Section 7231 is amended by striking “misdemeanor and, upon conviction thereof shall be fined not more than \$5,000 or imprisoned not more than one year, or both” and inserting “Class E felony, except that the maximum fine shall be \$5,000”.

(55) (A) Section 7232 is amended to read as follows:

“§ 7232. Failure to register by manufacturer or producer of gasoline or lubricating oil

“Any person who fails to register, as required by section 4101, or who in connection with any purchase of gasoline or lubricating oil falsely represents himself to be registered as provided by section 4101, shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.”

(B) The table of sections for part 2 of subchapter (A) of chapter 75 is amended by striking the item relating to section 5232 and inserting in lieu thereof the following:

“Sec. 7232. Failure to register by manufacturer or producer of gasoline or lubricating oil.”

(56) (A) Section 7233 is amended to read as follows:

“§ 7233. Failure to pay tax on cotton futures and other violations

“Any person who is liable for the payment of any tax imposed by subchapter (D) of chapter 39 who fails to pay that tax and any person who otherwise violates any provisions of subchapter (D) of chapter 39 or any rule or regulation thereunder shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code.”

(B) The table of sections for part 2 of subchapter (A) of chapter 75 is amended by striking the item relating to section 7233 and inserting in lieu thereof the following:

“Sec. 7233. Failure to pay tax on cotton futures and other violations.”

1 (57) Section 7234 is amended by—

2 (A) striking in subsection (a) “fined for each offense not more
3 than \$1,000 or be imprisoned for a period of not more than two
4 years” and inserting “guilty of a Class E felony”;

5 (B) striking in subsection (b) “misdemeanor, and shall be
6 punished by a fine of not less than \$100 nor more than \$2,000 and
7 be imprisoned for not less than 30 days nor more than 6 months”
8 and inserting “misdemeanor”;

9 (C) striking in subsection (c) “for each such offense be fined
10 not less than \$50 and not exceed \$500, and imprisoned not less
11 than 30 days nor more than 6 months” and inserting “be guilty
12 of a misdemeanor”;

13 (D) striking in subsection (d) (1) “fined not less than \$1,000
14 or more than \$5,000 and imprisoned not less than 6 months nor
15 more than three years” and inserting “guilty of a Class E
16 felony”;

17 (E) striking in subsection (d) (2) (A) “for each such offense
18 be fined not exceeding \$50, and imprisoned not less than 10 days
19 nor more than 6 months” and inserting “be guilty of a
20 misdemeanor”;

21 (F) striking in subsection (d) (2) (B) “for each such offense
22 be fined not exceeding \$100, and be imprisoned not more than
23 one year” and inserting “be guilty of a Class E felony”;

24 (G) striking in subsection (d) (3) “fined not less than \$500 nor
25 more than \$5,000 and be imprisoned not less than 6 months nor
26 more than two years” and inserting “guilty of a Class E felony”;
27 and

28 (H) striking out subsection (d) (4).

29 (58) Section 7235 (a) is amended by—

30 (A) striking in subsection (a) “fined for each such offense not
31 more than \$1,000 and be imprisoned not more than two years”
32 and inserting “guilty of a Class E felony”;

33 (B) striking in subsection (b) “for each such offense be fined
34 not less than \$50 and not exceeding \$500, and imprisoned not less
35 than 30 days nor more than 6 months’ and inserting “be guilty of
36 a misdemeanor”;

37 (C) striking in subsection (c) “deemed guilty of a misde-
38 meanor and upon conviction thereof shall be punished by a fine
39 of not more than \$1,000 or be imprisoned for not more than 6
40 months or by both such fine and imprisonment, in the discretion

of the court” and inserting “guilty of a regulatory offense under section 2–8F6 of title 18, United States Code”;

(D) striking out of subsection (d) “fined not less than \$50 nor more than \$500 for each offense” and inserting “guilty of a regulatory offense under section 2–8F6 of title 18, United States Code”;

(E) striking subsection (e).

(64) (A) Section 7263 is amended to read as follows:

“§ 7263. Penalties relating to cotton futures

“In addition to the criminal penalties provided by section 7233, there shall be imposed, on account of each violation of subchapter D of chapter 39, relating to cotton futures, a penalty of \$2,000, to be recovered in a civil action founded on subchapter D of chapter 39 in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of the United States attorney, to whom satisfactory evidence of violation of subchapter D of chapter 39 is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this subsection.”

(B) Section 4862 is amended by adding at the end thereof the following new subsection:

“(c) SUBPENA.—The Secretary of Agriculture may require by subpoena the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as may be necessary to enable him to carry out his duties under this part. Subpenas may be issued under the signature of the Secretary of Agriculture and may be served by any person designated by him. In the case of contumacy or refusal to obey a subpoena issued under this subsection by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such court, upon application made by the Attorney General of the United States, shall have jurisdiction to issue to such person an order requiring such person to appear before the Secretary of Agriculture there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of such person to obey any such order of the court may be punished by the court as a contempt thereof.”

(65) Section 7264 is amended by striking out “fined not less than \$1,000 nor more than \$5,000” and inserting “guilty of a regulatory offense under section 2–8F6 of title 18, United States Code”.

1 (66) Section 7265 is amended—

2 (A) striking out in paragraphs (1) and (2) of subsection (a)
3 “fined \$50 for each package in respect to which such offense is
4 committed” and inserting “guilty of a regulatory offense under
5 section 2–8F6 of title 18, United States Code”;

6 (B) striking out “liable to a penalty of \$50 by each such of-
7 fense” and inserting “guilty of a regulatory offense under section
8 2–8F6 of title 18, United States Code”; and

9 (C) striking out in subsection (c) “pay a penalty of \$1,000”
10 and inserting “by guilty of a regulatory offense under section
11 2–8F6 of title 18, United States Code”.

12 (67) Section 7266 is amended by—

13 (A) striking out “or corporation” in subsection (a) ;

14 (B) striking out in subsection (a) (1) “fined not less than \$400
15 nor more than \$3,000” and inserting “guilty of a misdemeanor”;

16 (C) striking out in subsection (a) (2) “fined not less than \$250
17 nor more than \$1,000” and inserting “guilty of a misdemeanor”;

18 (D) striking out in subsection (a) (3) “fined not less than
19 \$40 nor more than \$500 for each and every offense” and insert-
20 ing “guilty of a misdemeanor”;

21 (E) striking out in subsection (b) “deemed guilty of a mis-
22 demeanor and upon conviction thereof shall be fined not less than
23 \$500 nor more than \$1,000” and inserting “guilty of a regulatory
24 offense under section 2–8F6 of title 18, United States Code”;

25 (F) striking out in subsection (c) “deemed guilty of a misde-
26 meanor, and shall on conviction thereof be fined for each and
27 every offense not less than \$50 and not more than \$2,000” and in-
28 serting “guilty of a misdemeanor”;

29 (G) striking out in subsection (d) “fined \$50 for each package
30 in respect to which such offense is committed” and inserting
31 “guilty of a regulatory offense under section 2–8F6 of title 18,
32 United States Code”;

33 (H) striking out in subsection (e) “liable, for each offense, to
34 a penalty of \$100” and inserting “guilty of a regulatory offense
35 under section 2–8F6 of title 18, United States Code”;

36 (I) striking out in subsection (f) “liable to a penalty of \$50
37 for each such offense” and inserting “guilty of a regulatory of-
38 fense under section 2–8F6 of title 18, United States Code”.

39 (68) Section 7267 is amended by—

1 (A) amending subsection (a) to read as follows:

2 “(a) EXPORTATION OF MATCHES.—Any person who violates sec-
3 tion 4805(b) shall be guilty of a misdemeanor.”;

4 (B) striking out in subsection (b) “fined \$1,000 for each
5 offense” and inserting “guilty of a misdemeanor”;

6 (C) striking out in subsection (c) “fined not more than \$50
7 for each package in respect of such which offense is committed”
8 and inserting “guilty of a regulatory offense under section 2-8F6
9 of title 18, United States Code”; and

10 (D) striking out in subsection (d) “fined not more than \$50
11 for each package in respect of which such offense is committed”
12 and inserting “guilty of a regulatory offense under section 2-8F6
13 of title 18, United States Code”.

14 (69) Section 7268 is amended by inserting “civil” before “penalty”.

15 (70) Section 7270 is amended by striking out “fined” and inserting
16 “civil penalty”.

17 (71) Section 7271 is amended by striking out “liable for each such
18 offense to a penalty of \$50” and inserting “guilty of a regulatory
19 offense under section 2-8F6 of title 18, United States Code”.

20 (72) Section 7272 is amended by striking out “liable to a penalty
21 of \$50” and inserting “guilty of a regulatory offense under section
22 2-8F6 of title 18, United States Code”.

23 (73) Section 7273 is amended by inserting “civil” before “penalty”
24 each time it appears.

25 (74) Section 7274 is amended by striking out “liable to a penalty
26 of \$50 for each package in respect of which such offense is committed”
27 and inserting “guilty of a regulatory offense under section 2-8F6 of
28 title 18, United States Code”.

29 (75) Section 7302 is amended by striking out “chapter 205” and
30 inserting “chapter 42”.

31 (76) Section 7401 is amended by striking out “fine.”.

32 (77) Section 7604 (b) is amended by adding at the end thereof the
33 following: “The provisions of section 2-6C2 of title 18, United States
34 Code shall apply to persons summoned under the internal revenue laws
35 to appear, to testify, or to produce such books, papers, records, or
36 other data.”

37 (78) The Internal Revenue Code of 1954 is amended by adding at
38 the end thereof the following new subtitle:

1 **"Subtitle I—Firearms, Explosives, and Other Dangerous Articles**

"Chapter

"97. Firearms.

"98. Possession of firearms by certain persons.

"99. Importation, manufacture, distribution, and storage of explosive materials.

2

"Chapter 97—FIREARMS

"Sec.

"10001. Definitions.

"10002. Unlawful acts.

"10003. Licensing.

"10004. Penalties.

"10005. Exceptions; relief from disabilities.

"10006. Rules and regulations.

"10007. Effect on State law.

"10008. Separability.

3 **"§ 10001. Definitions**

4 **"(a) IN GENERAL.—**For purposes of this chapter—

5 **"(1) PERSON; WHOEVER.—**The term 'person' or the term 'whoever'
6 means an individual, corporation, company, association, firm, partner-
7 ship, society, or joint stock company.

8 **"(2) INTERSTATE OR FOREIGN COMMERCE.—**The term 'interstate or
9 foreign commerce' includes commerce between any place in a State
10 and any place outside of that State, or within any possession of the
11 United States (not including the Canal Zone) or the District of
12 Columbia, but such term does not include commerce between places
13 within the same State but through any place outside of that State. The
14 term 'State' includes the District of Columbia, the Commonwealth of
15 Puerto Rico, and the possessions of the United States (not including
16 the Canal Zone).

17 **"(3) FIREARM.—**The term 'firearm' means (A) any weapon (includ-
18 ing a starter gun) which will or is designed to or may readily be con-
19 verted to expel a projectile by the action of an explosive; (B) the
20 frame or receiver of any such weapon; (C) any firearm muffler or
21 firearm silencer; or (D) any destructive device. Such term does not
22 include an antique firearm.

23 **"(4) DESTRUCTIVE DEVICE.—**The term 'destructive device' means—

24 **"(A) any explosive, incendiary, or poison gas—**

25 **"(i) bomb,**

26 **"(ii) grenade,**

27 **"(iii) rocket having a propellant charge of more than four**
28 **ounces,**

29 **"(iv) missile having an explosive or incendiary charge of**
30 **more than one-quarter ounce,**

31 **"(v) mine, or**

“(vi) device similar to any of the devices described in the preceding clauses;

“(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

“(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term ‘destructive device’ shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting purposes.

“(5) SHOTGUN.—The term ‘shotgun’ means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

“(6) SHORT-BARRELED SHOTGUN.—The term ‘short-barreled’ means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches.

“(7) RIFLE.—The term ‘rifle’ means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

“(8) SHORT-BARRELED RIFLE.—The term ‘short-barreled rifle’ means

1 a rifle having one or more barrels less than sixteen inches in length and
2 any weapon made from a rifle (whether by alteration, modification, or
3 otherwise) if such weapon, as modified, has an overall length of less
4 than twenty-six inches.

5 “(9) **IMPORTER.**—The term ‘importer’ means any person engaged in
6 the business of importing or bringing firearms or ammunition into the
7 United States for purposes of sale or distribution; and the term
8 ‘licensed importer’ means any such person licensed under the pro-
9 visions of this chapter.

10 “(10) **MANUFACTURER.**—The term ‘manufacturer’ means any person
11 engaged in the manufacture of firearms or ammunition for purposes of
12 sale or distribution; and the term ‘licensed manufacturer’ means any
13 such person licensed under the provisions of this chapter.

14 “(11) **DEALER.**—The term ‘dealer’ means (A) any person engaged
15 in the business of selling firearms or ammunition at wholesale or re-
16 tail, (B) any person engaged in the business of repairing firearms or of
17 making or fitting special barrels, stocks, or trigger mechanisms to fire-
18 arms, or (C) any person who is a pawnbroker. The term ‘licensed
19 dealer’ means any dealer who is licensed under the provisions of this
20 chapter.

21 “(12) **PAWNBROKER.**—The term ‘pawnbroker’ means any person
22 whose business or occupation includes the taking or receiving, by way
23 of pledge or pawn, of any firearm or ammunition as security for the
24 payment or repayment of money.

25 “(13) **COLLECTOR.**—The term ‘collector’ means any person who ac-
26 quires, holds, or disposes of firearms or ammunition as curios or relics.
27 as the Secretary shall by regulation define, and the term ‘licensed col-
28 lector’ means any such person licensed under the provisions of this
29 chapter.

30 “(14) **INDICTMENT.**—The term ‘indictment’ includes an indictment
31 or information in any court under which a crime punishable by impris-
32 onment for a term exceeding one year may be prosecuted.

33 “(15) **FUGITIVE FROM JUSTICE.**—The term ‘fugitive from justice’
34 means any person who has fled from any State to avoid prosecution
35 for a crime or to avoid giving testimony in any criminal proceeding.

36 “(16) **ANTIQUE FIREARM.**—The term ‘antique firearm’ means—

37 “(A) any firearm (including any firearm with a matchlock,
38 flintlock, percussion cap, or similar type of ignition system) manu-
39 factured in or before 1898; and

40 “(B) any replica of any firearm described in subparagraph

(A) if such replica—

“(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

“(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

“(17) **AMMUNITION.**—The term ‘ammunition’ means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

“(18) **SECRETARY; SECRETARY OF THE TREASURY.**—The term ‘Secretary’ or ‘Secretary of the Treasury’ means the Secretary of the Treasury or his delegate.

“(19) **PUBLISHED ORDINANCE.**—The term ‘published ordinance’ means a published law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

“(20) **CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR.**—The term ‘crime punishable by imprisonment for a term exceeding one year’ shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

“(21) **STATE.**—The term ‘State’ means each of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and any possession of the United States.

“(b) **ARMED FORCES.**—For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

“§ 10002. Unlawful acts

“(a) **IN GENERAL.**—It shall be unlawful—

“(1) for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in

1 the course of such business to ship, transport, or receive any fire-
2 arm or ammunition in interstate or foreign commerce;

3 “(2) for any person, other than a licensed importer, licensed
4 manufacturer, licensed dealer, or licensed collector to transport
5 into or receive in the State where he resides (or if the person is a
6 corporation or other business entity, the State where it maintains
7 a place of business) any firearm purchased or otherwise obtained
8 by such person outside that State, except that this paragraph (A)
9 shall not preclude any person who lawfully acquires a firearm by
10 bequest or intestate succession in a State other than his State of
11 residence from transporting the firearm into or receiving it in
12 that State, if it is lawful for such person to purchase or possess
13 such firearm in that State, (B) shall not apply to the transporta-
14 tion or receipt of a rifle or shotgun obtained in conformity with
15 the provisions of subsection (b) (3) of this section, and (C) shall
16 not apply to the transportation of any firearm acquired in any
17 State prior to the effective date of this chapter;

18 “(3) for any person, other than a licensed importer, licensed
19 manufacturer, licensed dealer, or licensed collector, to transport
20 in interstate or foreign commerce any destructive device, machine-
21 gun (as defined in section 5845 of this title), short-barreled shot-
22 gun, or short-barreled rifle, except as specifically authorized by
23 the Secretary consistent with public safety and necessity; and

24 “(4) for any person in connection with the acquisition or at-
25 tempted acquisition of any firearm or ammunition from a licensed
26 importer, licensed manufacturer, licensed dealer, or licensed col-
27 lector, knowingly to make any false or fictitious oral or written
28 statement or to furnish or exhibit any false, fictitious, or misrep-
29 represented identification, intended or likely to deceive such importer,
30 manufacturer, dealer, or collector with respect to any fact material
31 to the lawfulness of the sale or other disposition of such firearm or
32 ammunition under the provisions of this chapter.

33 “(b) OTHER UNLAWFUL ACTS.—

34 “(1) INTERSTATE OR FOREIGN TRANSPORTATION.—It shall be un-
35 lawful for any importer, manufacturer, dealer, or collector li-
36 censed under the provisions of this chapter to ship or transport in
37 interstate or foreign commerce any firearm or ammunition to any
38 person other than a licensed importer, licensed manufacturer,
39 licensed dealer, or licensed collector. It shall be a defense to any
40 action brought for violation of this paragraph that—

1 “(A) the licensed importer, licensed manufacturer, licensed
2 dealer, or licensed collector against whom such action is
3 brought, was returning a firearm or replacement firearm of
4 the same kind and type to a person from whom it was
5 received;

6 “(B) the individual against whom such action was brought
7 was mailing a firearm owned in compliance with Federal,
8 State, and local law to a licensed importer, licensed manu-
9 facturer, or licensed dealer for the sole purpose of repair
10 or customizing; or

11 “(C) the licensed importer, licensed manufacturer, or li-
12 censed dealer against whom such action is brought was de-
13 positing a firearm for conveyance in the mail to an officer,
14 employee, agent, or watchman who, under section 1733 of title
15 39, is eligible to receive through the mails pistols, revolvers,
16 and other firearms capable of being concealed on the person,
17 for use in connection with his official duty.

18 “(2) INTERSTATE SALES, ET CETERA.—It shall be unlawful for any
19 person (other than a licensed importer, licensed manufacturer,
20 licensed dealer, or licensed collector) to transfer, sell, trade, give,
21 transport, or deliver any firearm to any person (other than a
22 licensed importer, licensed manufacturer, licensed dealer, or li-
23 censed collector) who the transferor knows or has reasonable cause
24 to believe resides in any State other than that in which the trans-
25 feror resides (or other than that in which its place of business
26 is located if the transferor is a corporation or other business
27 entity). It shall be a defense to any action brought under this
28 paragraph that the person against whom such action is brought
29 that he—

30 “(A) was transferring, transporting, or delivering such
31 firearm in order to carry out a bequest of that firearm or a
32 transfer by intestate succession of that firearm, to a person
33 who is permitted to possess a firearm under the laws of the
34 State in which that person resides; or

35 “(B) was lending or renting that firearm to a person for
36 temporary use for lawful sporting purposes.

37 “(3) SALE OR DELIVERY TO PROHIBITED PERSONS.—It shall be un-
38 lawful for any licensed importer, licensed manufacturer, licensed
39 dealer, or licensed collector to sell or deliver—

1 “(A) any firearm or ammunition to any individual who
2 the licensee knows or has reasonable cause to believe is less
3 than eighteen years of age, and, if the firearm, or ammunition
4 is other than a shotgun or rifle, or ammunition for a shotgun
5 or rifle, to any individual who the licensee knows or has rea-
6 sonable cause to believe is less than twenty-one years of age;

7 “(B) any firearm or ammunition to any person in any
8 State where the purchase or possession by such person of
9 such firearm or ammunition would be in violation of any
10 State law or any published ordinance applicable at the place
11 of sale, delivery or other disposition, unless the licensee knows
12 or has reasonable cause to believe that the purchase or posses-
13 sion would not be in violation of such State law or such
14 published ordinance;

15 “(C) any firearm to any person who the licensee knows
16 or has reasonable cause to believe does not reside in (or if the
17 person is a corporation or other business entity, does not
18 maintain a place of business in) the State in which the
19 licensee's place of business is located;

20 “(D) to any person any destructive device, machinegun
21 (as defined in section 5845 of this title), a short-barreled shot-
22 gun, or short-barreled rifle, except as specifically authorized
23 by the Secretary consistent with public safety and necessity;
24 and

25 “(E) any firearm or ammunition to any person unless the
26 licensee notes in his records, required to be kept pursuant to
27 section 10003, the name, age, and place of residence of such
28 person if the person is an individual, or the identity and
29 principal and local places of business of such person if the
30 person is a corporation or other business entity.

31 It shall be a defense to any action brought for violation of sub-
32 paragraph (C) of this paragraph that the sale or delivery of a rifle
33 or shotgun was made to a resident of a State contiguous to the State
34 in which the licensee's place of business is located if the purchaser's
35 State of residence permits such sale or delivery by law, the sale fully
36 complies with the legal conditions of sale in both such contiguous
37 States, and the purchaser and the licensee have, prior to the sale, or
38 delivery for sale, of the rifle or shotgun, complied with all of the re-
39 quirements of section 1812 of this title applicable to intrastate trans-
40 actions other than at the licensee's business premises. It shall be a

defense to any action brought for violation of subparagraph (C) of this paragraph that the transfer of the firearm was a loan or rental of such firearm to another person for temporary use for lawful sporting purposes. It shall be a defense to any action brought for violation of subparagraph (C) of this paragraph that the person against whom such action is brought is a participant in an organized rifle or shotgun match or contest or engaged in hunting, in a State other than his State of residence, whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, and that such person purchased a rifle or shotgun in such other State from a licensed dealer and presented to such dealer a sworn statement (A) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (B) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail. It shall be a defense to any action brought for violation of this paragraph that the transaction with respect to which such action was brought was a transaction between licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, or that the sale or delivery with respect to which such action is brought was a sale or delivery to a research organization designated by the Secretary.

“(c) OFF-THE-PREMISES PURCHASE.—In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee’s business premises (other than another licensed importer, manufacturer, or dealer) only if—

“(1) the transferee submits to the transferor a sworn statement in the following form:

Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 97 of the Internal Revenue Code of 1954 from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are_____

Signature_____ Date_____

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

1 “(2) the transferor has, prior to the shipment or delivery of the
2 firearm, forwarded by registered or certified mail (return receipt
3 requested) a copy of the sworn statement, together with a descrip-
4 tion of the firearm, in a form prescribed by the Secretary, to the
5 chief law enforcement officer of the transferee’s place of residence,
6 and has received a return receipt evidencing delivery of the state-
7 ment or has had the statement returned due to the refusal of the
8 named addressee to accept such letter in accordance with United
9 States Postal Service regulations; and

10 “(3) the transferor has delayed shipment or delivery for a
11 period of at least seven days following receipt of the notification
12 of the acceptance or refusal of delivery of the statement.

13 A copy of the sworn statement and a copy of the notification to the
14 local law enforcement officer, together with evidence of receipt or
15 rejection of that notification shall be retained by the licensee as a part
16 of the records required to be kept under section 10003.

17 “(d) TRANSFERS TO CRIMINALS, FUGITIVES FROM JUSTICE, DRUG
18 USERS, AND INCOMPETENT PERSONS.—It shall be unlawful for any
19 licensed importer, licensed manufacturer, licensed dealer, or licensed
20 collector to sell or otherwise dispose of any firearm or ammunition to
21 any person knowing or having reasonable cause to believe that such
22 person—

23 “(1) is under indictment for, or has been convicted in any court
24 of, a crime punishable by imprisonment for a term exceeding one
25 year;

26 “(2) is a fugitive from justice;

27 “(3) is an unlawful user of or addicted to marihuana or any
28 depressant or stimulant drug (as defined in section 201(v) of the
29 Federal Food, Drug, and Cosmetic Act) or narcotic drug (as de-
30 fined in section 4731(a) of this title; or

31 “(4) has been adjudicated as a mental defective or has been
32 committed to any mental institution.

33 It shall be a defense to any action brought for violation of this
34 subsection that the sale or disposition of such firearm or ammunition
35 was made to—

36 “(1) a licensed importer, licensed manufacturer, licensed
37 dealer, or licensed collector, who, under section 10005(b), is
38 not precluded from dealing in firearms or ammunition; or

39 “(2) a person who has been granted release from disabil-
40 ities under section 10003.

1 “(e) WRITTEN NOTICE TO CARRIERS.—It shall be unlawful for any
2 person knowingly to deliver or cause to be delivered to any common
3 or contract carrier for transportation or shipment in interstate or
4 foreign commerce, to persons other than licensed importers, licensed
5 manufacturers, licensed dealers, or licensed collectors, any package or
6 other container in which there is any firearm or ammunition without
7 written notice to the carrier that such firearm or ammunition is being
8 transported or shipped. It shall be a defense to any action brought
9 for violation of this subsection against a person who is a passenger
10 in interstate or foreign commerce and who owns or legally possesses a
11 firearm or ammunition being transported abroad any common or con-
12 tract carrier for movement with such passenger that he delivered such
13 firearm or ammunition into the custody of the pilot, captain, conductor,
14 or operator of such common or contract carrier for the duration of the
15 trip.

16 “(f) UNLAWFUL SHIPMENT, ET CETERA, BY COMMON OR CONTRACT
17 CARRIER.—It shall be unlawful for any common or contract carrier to
18 transport or deliver in interstate or foreign commerce any firearm or
19 ammunition with knowledge or reasonable cause to believe that the
20 shipment, transportation, or receipt thereof would be in violation of
21 the provisions of this chapter.

22 “(g) UNLAWFUL SHIPMENT BY CERTAIN PERSONS.—It shall be un-
23 lawful for any person—

24 “(1) who is under indictment for, or who has been convicted
25 in any court of, a crime punishable by imprisonment for a term
26 exceeding one year;

27 “(2) who is a fugitive from justice;

28 “(3) who is an unlawful user of or addicted to marihuana or
29 any depressant or stimulant drug (as defined in section 201(v)
30 of the Federal Food, Drug, and Cosmetic Act) or narcotic drug
31 (as defined in section 4731(a) of this title); or

32 “(4) who has been adjudicated as a mental defective or who
33 has been committed to a mental institution;

34 to ship or transport any firearm or ammunition in interstate or foreign
35 commerce.

36 “(h) UNLAWFUL RECEIPT BY CERTAIN PERSONS.—It shall be unlaw-
37 ful for any person—

38 “(1) who is under indictment for, or who has been convicted
39 in any court of, a crime punishable by imprisonment for a term
40 exceeding one year;

1 “(2) who is a fugitive from justice;

2 “(3) who is an unlawful user of or addicted to marihuana or
3 any depressant or stimulant drug (as defined in section 201(v) of
4 the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as
5 defined in section 4731(a) of this title); or

6 “(4) who has been adjudicated as a mental defective or who
7 has been committed to any mental institution;
8 to receive any firearm or ammunition which has been shipped or trans-
9 ported in interstate or foreign commerce.

10 “(i) SHIPMENT OR RECEIPT OF FIREARMS WITH ALTERED SERIAL
11 NUMBER.—It shall be unlawful for any person knowingly to trans-
12 port, ship, or receive, in interstate or foreign commerce, any firearm
13 which has had the importer's or manufacturer's serial number re-
14 moved, obliterated, or altered.

15 “(j) UNLAWFUL IMPORTATION OF FIREARMS OR AMMUNITION.—
16 Except as provided in section 10005(d), it shall be unlawful for any
17 person knowingly to import or bring into the United States or any
18 possession thereof any firearm or ammunition; and it shall be unlawful
19 for any person knowingly to receive any firearm or ammunition which
20 has been imported or brought into the United States or any possession
21 thereof in violation of the provisions of this chapter.

22 “(k) RECORDS.—It shall be unlawful for any licensed importer,
23 licensed manufacturer, licensed dealer, or licensed collector knowingly
24 to make any false entry in, to fail to make appropriate entry in, or to
25 fail to properly maintain, any record which he is required to keep
26 pursuant to section 10003 or regulations promulgated thereunder.

27 “§ 10003. Licensing

28 “(a) IN GENERAL.—No person shall engage in business as a firearms
29 or ammunition importer, manufacturer, or dealer until he has filed
30 an application with, and received a license to do so from, the Secretary.
31 The application shall be in such form and contain such information as
32 the Secretary shall by regulation prescribe. Each applicant shall pay
33 a fee for obtaining such a license, a separate fee being required for
34 each place in which the applicant is to do business, as follows:

35 “(1) If the applicant is a manufacturer—

36 “(A) of destructive devices or ammunition for destruc-
37 tive devices, a fee of \$1,000 per year;

38 “(B) of firearms other than destructive devices, a fee of
39 \$50 per year; or

“(C) of ammunition for firearms other than destructive devices, a fee of \$10 per year.

“(2) If the applicant is an importer—

“(A) of destructive devices or ammunition for destructive devices, a fee of \$1,000 per year; or

“(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, a fee of \$50 per year.

“(3) If the applicant is a dealer—

“(A) in destructive devices or ammunition for destructive devices, a fee of \$1,000 per year;

“(B) who is a pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices, a fee of \$25 per year; or

“(C) who is not a dealer in destructive devices or a pawnbroker, a fee of \$10 per year.

“(b) COLLECTORS.—Any person desiring to be licensed as a collector shall file an application for such license with the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. The fee for such license shall be \$10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

“(c) ISSUANCE.—Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license.

“(d) CONDITIONS OF APPROVAL.—(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

“(A) the applicant is twenty-one years of age or over;

“(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 10002 (g) and (h) of this chapter;

“(C) the applicant has not knowingly violated any of the provisions of this chapter or regulations issued thereunder;

1 “(D) the applicant has not knowingly failed to disclose any
2 material information required, or has not made any false state-
3 ment as to any material fact, in connection with his application;
4 and

5 “(E) the applicant has in a State (i) premises from which he
6 conducts business subject to license under this chapter or from
7 which he intends to conduct such business within a reasonable
8 period of time, or (ii) in the case of a collector, premises from
9 which he conducts his collecting subject to license under this
10 chapter or from which he intends to conduct such collecting within
11 a reasonable period of time.

12 “(2) The Secretary must approve or deny an application for a license
13 within the forty-five day period beginning on the date it is received.
14 If the Secretary fails to act within such period, the applicant may
15 file an action under section 1361 of title 28 to compel the Secretary to
16 act. If the Secretary approves an applicant’s application, such appli-
17 cant shall be issued a license upon the payment of the prescribed fee.

18 “(e) REVOCATION.—The Secretary may, after notice and oppor-
19 tunity for hearing, revoke any license issued under this section if the
20 holder of such license has violated any provision of this chapter or any
21 rule or regulation prescribed by the Secretary under this chapter. The
22 Secretary’s action under this subsection may be reviewed only as pro-
23 vided in subsection (f) of this section.

24 “(f) REVIEW OF REVOCATION.—

25 “(1) NOTICE.—Any person whose application for a license is
26 denied and any holder of a license which is revoked shall receive a
27 written notice from the Secretary stating specifically the grounds
28 upon which the application was denied or upon which the license
29 was revoked. Any notice of a revocation of a license shall be given
30 to the holder of such license before the effective date of the
31 revocation.

32 “(2) HEARING.—If the Secretary denies an application for, or
33 revokes, a license, he shall, upon request by the aggrieved party,
34 promptly hold a hearing to review his denial or revocation. In
35 the case of a revocation of a license, the Secretary shall upon the
36 request of the holder of the license stay the effective date of the
37 revocation. A hearing held under this paragraph shall be held at
38 a location convenient to the aggrieved party.

39 “(3) APPEAL.—If after a hearing held under paragraph (2)
40 the Secretary decides not to reverse his decision to deny an applica-

tion or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

“(g) RECORDS.—Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms and ammunition at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such importers, manufacturers, dealers, and collectors shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition importer, manufacturer, dealer, or collector for the purpose of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition.

“(h) POSTING OF LICENSE.—Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

“(i) IDENTIFICATION OF IMPORTED FIREARMS.—Licensed importers and licensed manufacturers shall identify, by means of a serial number

1 engraved or cast on the receiver or frame of the weapon, in such man-
2 ner as the Secretary shall by regulations prescribe, each firearm im-
3 ported or manufactured by such importer or manufacturer.

4 “(j) EXCEPTIONS.—This section shall not apply to anyone who en-
5 gages only in hand loading, reloading, or custom loading ammunition
6 for his own firearm, and who does not hand load, reload, or custom
7 load ammunition for others.

8 **“§ 10004. Penalties**

9 “(a) IN GENERAL.—Whoever violates any provision of this chap-
10 ter (other than the provisions of subsection (b), (c), or (d) of section
11 10002) or knowingly makes any false statement or representation with
12 respect to the information required by the provisions of this chapter
13 to be kept in the records of a person licensed under this chapter, or in
14 applying for any license or exemption or relief from disability under
15 the provisions of this chapter, shall be guilty of a Class E felony,
16 except that the maximum fine shall be \$5,000.

17 “(b) FORFEITURE.—Any firearm or ammunition involved in or used
18 or intended to be used in, any violation of the provisions of this chap-
19 ter or any rule or regulation promulgated thereunder, or any violation
20 of any criminal law of the United States, shall be subject to seizure
21 and forfeiture and all provisions of this title relating to the seizure,
22 forfeiture, and disposition of firearms, as defined in section 5845(a),
23 shall so far as applicable, extend to seizures and forfeitures under the
24 provisions of this chapter.

25 **“§ 10005. Defenses; relief from disabilities**

26 “(a) IN GENERAL.—It shall be a defense to any prosecution brought
27 for violation of the provisions of this chapter—

28 “(1) with respect to the transportation, shipment, receipt, or
29 importation of any firearm or ammunition that such firearm or
30 ammunition was imported for, sold or shipped to, or issued for the
31 use of, the United States or any department or agency thereof or
32 any State or any department, agency, or political subdivision
33 thereof;

34 “(2) with respect to the shipment or receipt of any firearm or
35 ammunition that such firearm or ammunition was sold or issued
36 by the Secretary of the Army under section 4308 of title 10;

37 “(3) with respect to the transportation of any firearm or am-
38 munition that such transportation was carried out to enable a per-
39 son, who lawfully received such firearm or ammunition from the

Secretary of the Army, to engage in military training or in competitions;

“(4) with respect to the shipment of any firearm or ammunition, that such shipment—

“(A) is not otherwise prohibited by this chapter or any other Federal law,

“(B) was carried out by a licensed importer, licensed manufacturer, or licensed dealer,

“(C) was to a member of the United States Armed Forces on active duty outside the United States, or to a club recognized by the Department of Defense whose entire membership is composed of such members,

“(D) consisted of firearms or ammunition determined by the Secretary of the Treasury or his delegate to be generally recognized as particularly suitable for sporting purposes, and

“(E) consisted of firearms or ammunition intended for the personal use of such member or club.

“(b) FIREARMS BROUGHT INTO THE UNITED STATES BY MEMBERS OF THE ARMED FORCES RETURNING FROM DUTY OUTSIDE OF THE UNITED STATES.—It shall be a defense to any prosecution brought for the transportation, shipment, receipt, or importation of a firearm or ammunition in violation of the provisions of this chapter that such transportation, shipment, receipt, or importation was authorized by the Secretary or his delegate under this subsection. When established to the satisfaction of the Secretary to be consistent with the provisions of this chapter and other applicable Federal and State laws and published ordinances, the Secretary may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (1) determined by the Secretary to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (2) intended for the personal use of such member.

“(c) DEFINITION OF UNITED STATES.—For purposes of subsection (a) (4) and subsection (b) of this section, the term ‘United States’ means each of the several States and the District of Columbia.

1 “(d) IMPORTATION OF CERTAIN FIREARMS AND AMMUNITION.—It
2 shall be a defense to a prosecution brought under this chapter for the
3 importation of a firearm or ammunition that such importation was
4 authorized by the Secretary under this subsection. The Secretary may
5 authorize a firearm or ammunition to be imported or brought into the
6 United States or any possession thereof if the person importing or
7 bringing in the firearm or ammunition establishes to the satisfaction of
8 the Secretary that the firearm or ammunition—

9 “(1) is being imported or brought in for scientific or research
10 purposes, or is for use in connection with competition or training
11 pursuant to chapter 401 of title 10;

12 “(2) is an unserviceable firearm, other than a machinegun as
13 defined in section 5845(b) of this title (not readily restorable to
14 firing condition), imported or brought in as a curio or museum
15 piece;

16 “(3) is of a type that does not fall within the definition of a
17 firearm as defined in section 5845(a) of this title and is generally
18 recognized as particularly suitable for or readily adaptable to
19 sporting purposes, excluding surplus military firearms; or

20 “(4) was previously taken out of the United States or a posses-
21 sion by the person who is bringing in the firearm or ammunition.
22 The Secretary may permit the conditional importation or bringing in
23 of a firearm or ammunition for examination and testing in connection
24 with the making of a determination as to whether the importation or
25 bringing in of such firearm or ammunition will be allowed under this
26 subsection.

27 “(e) REMOVAL OF DISABILITIES.—

28 “(1) OPERATIONAL PENDING FINAL CONVICTION.—A licensed im-
29 porter, licensed manufacturer, licensed dealer, or licensed collec-
30 tor who is indicted for a crime punishable by imprisonment for a
31 term exceeding one year, may notwithstanding any other provi-
32 sion of this chapter, continue operation pursuant to his existing
33 license (if prior to the expiration of the term of the existing
34 license timely application is made for a new license) during the
35 term of such indictment and until any conviction pursuant to the
36 indictment becomes final.

37 “(2) REMOVAL OF DISABILITIES BY SECRETARY.—A person who
38 has been convicted of a crime punishable by imprisonment for a
39 term exceeding one year (other than a crime involving the use of
40 a firearm or other weapon or a violation of this chapter or of the

National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A licensed importer, licensed manufacturer, licensed dealer or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter by reason of such a conviction, shall not be barred by such conviction from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

“§ 10006. Regulations

“The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter, including—

“(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license; and

“(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this section.

The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

“§ 10007. Effect on State law

“No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between

such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

“§ 10008. Separability

“If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

“Chapter 98.—POSSESSION OF FIREARMS BY CERTAIN PERSONS

“Sec. 10021. Findings and Declaration.

“Sec. 10022. Receipt, Possession, or Transportation of Firearms.

“Sec. 10023. Defenses.

“§ 10021. Findings and declaration

“The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

“(1) a burden on commerce or threat affecting the free flow of commerce;

“(2) a threat to the safety of the President of the United States and Vice President of the United States;

“(3) an impediment or a threat to the exercise of free speech and the free exercise of religion guaranteed by the first amendment to the Constitution of the United States; and

“(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

“§ 10022. Receipt, possession, or transportation of firearms

“(a) PERSONS LIABLE; PENALTIES FOR VIOLATIONS.—Any person who—

“(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony; or

“(2) has been discharged from the Armed Forces under dishonorable conditions; or

“(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent; or

“(4) having been a citizen of the United States has renounced his citizenship; or

“(5) being an alien is illegally or unlawfully in the United States;

and who receives, or transports in commerce or affecting commerce, or possesses, after the date of enactment of this Act, any firearm, shall be guilty of a Class E felony.

“(b) EMPLOYMENT; PERSONS LIABLE; PENALTIES FOR VIOLATIONS.—Any individual who to his knowledge and while being employed by any person who—

“(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

“(2) has been discharged from the Armed Forces under dishonorable conditions, or

“(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

“(4) having been a citizen of the United States has renounced his citizenship, or

“(5) being an alien is illegally or unlawfully in the United States,

and who, in the course of such employment, receives, possesses, or transports in commerce or affecting commerce, after the date of the enactment of this Act, any firearm, shall be guilty of a Class E felony.

“(c) DEFINITIONS.—For purposes of this chapter—

“(1) COMMERCE.—The term ‘commerce’ means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

“(2) FELONY.—The term ‘felony’ means any offense punishable by imprisonment for a term of one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less.

“(3) FIREARM.—The term ‘firearm’ means a shotgun, rifle, or destructive device.

“(4) SHOTGUN.—The term ‘shotgun’ means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, to use the

energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

“(5) RIFLE.—The term ‘rifle’ means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

“(6) DESTRUCTIVE DEVICE.—The term ‘destructive device’ means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter.

“§ 10023. Defenses

“It shall be a defense to a prosecution brought for a violation of this chapter—

“(1) with respect to any person who is a prisoner, that he, by reason of duties connected with law enforcement, has expressly been entrusted with a firearm by competent authority of the prison; and

“(2) with respect to any prisoner who has been pardoned by the President of the United States or the chief executive of any State, that he has been so pardoned and that he has expressly been authorized by the President or chief executive of the State, as the case may be, to receive, possess, or transport in commerce a firearm.

“CHAPTER 99.—IMPORTATION, MANUFACTURE, DISTRIBUTION, AND STORAGE OF EXPLOSIVE MATERIALS

“Sec. 10031. Definitions.

“Sec. 10032. Unlawful Acts.

“Sec. 10033. Licensing and User Permits.

“Sec. 10034. Penalties

“Sec. 10035. Defenses ; Relief from Disabilities.

“Sec. 10036. Additional Powers of the Secretary.

“Sec. 10037. Rules and Regulations.

“Sec. 10038. Effect on State Law.

“§ 10031. Definitions

“For purposes of this chapter—

1 “(1) **PERSON.**—The term ‘person’ means any individual, corpo-
2 ration, company, association, firm, partnership, society, or joint
3 stock company.

4 “(2) **INTERSTATE OR FOREIGN COMMERCE.**—The term ‘interstate
5 or foreign commerce’ means commerce between any place in a
6 State and any place outside of that State, or within any possession
7 of the United States (not including the Canal Zone or the District
8 of Columbia), and commerce between places within the same state
9 but through any place outside of that State. ‘State’ includes the
10 District of Columbia, the Commonwealth of Puerto Rico, and the
11 possessions of the United States (not including the Canal Zone).

12 “(3) **EXPLOSIVE MATERIALS.**—The term ‘explosive materials’
13 means explosives, blasting agents, and detonators.

14 “(4) **EXPLOSIVES.**—Except for the purposes of subsections (d),
15 (e), (f), (g), (h), (i), and (j) of section 10034, ‘explosives’
16 means any chemical compound, mixture, or device, the primary or
17 common purpose of which is to function by explosion; the term
18 includes, but is not limited to, dynamite and other high explosives,
19 black powder, pellet powder, initiating explosives, detonators,
20 safety fuses, squibs, detonating cord, igniter cord, and igniters.
21 The Secretary shall publish and revise at least annually in the
22 Federal Register a list of these and any additional explosives
23 which he determines to be within the coverage of this chapter.
24 For the purposes of subsections (d), (e), (f), (g), (h), and (i)
25 of section 10034, the term ‘explosive’ is defined in subsection (j) of
26 such section 10034.

27 “(5) **BLASTING AGENT.**—The term ‘blasting agent’ means any
28 material or mixture, consisting of fuel and oxidizer, intended for
29 blasting, not otherwise defined as an explosive: *Provided*, That the
30 finished product, as mixed for use or shipment, cannot be detonated
31 by means of a numbered blasting cap when unconfined.

32 “(6) **DETONATOR.**—The term ‘detonator’ means any device con-
33 taining a detonating charge that is used for initiating detonation
34 in an explosive; the term includes, but is not limited to, electric
35 blasting caps of instantaneous and delay types, blasting caps for
36 use with safety fuses and detonating-cord delay connectors.

37 “(7) **IMPORTER.**—The term ‘importer’ means any person en-
38 gaged in the business of importing or bringing explosive mate-
39 rials into the United States for purposes of sale or distribution.

40 “(8) **MANUFACTURER.**—The term ‘manufacturer’ means any per-

son engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

“(9) DEALER.—The term ‘dealer’ means any person engaged in the business of distributing explosive materials at wholesale or retail.

“(10) PERMITTEE.—The term ‘permittee’ means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.

“(11) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or his delegate.

“(12) CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR.—The term ‘crime punishable by imprisonment for a term exceeding one year’ shall not mean (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

“(13) LICENSEE.—The term ‘licensee’ means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

“(14) DISTRIBUTE.—The term ‘distribute’ means sell, issue, give, transfer, or otherwise dispose of.

“§ 10032. Unlawful acts

“(a) UNLICENSED DEALING IN EXPLOSIVE MATERIALS; FURNISHING INCORRECT INFORMATION RELATING TO EXPLOSIVE MATERIALS.—It shall be unlawful for any person—

“(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

“(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive, for the purpose of obtaining explosive materials, or a license, permit, exemption or relief from disability under the provisions of this chapter; and

“(3) other than a licensee or permittee knowingly—

“(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a contiguous State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

“(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

“(b) **LAWFUL DISTRIBUTEES.**—It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

“(1) a licensee;

“(2) a permittee; or

“(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser’s residence.

“(c) **UNLAWFUL DISTRIBUTION FOR TRANSPORTATION INTO CERTAIN STATES.**—It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

“(d) **UNLAWFUL DISTRIBUTEES.**—It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

“(1) is under twenty-one years of age;

“(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

“(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

“(4) is a fugitive from justice;

“(5) is an unlawful user of marihuana (as defined in section 4761 of this title or any depressant or stimulant drug (as defined

1 in section 201(v) of the Federal Food, Drug, and Cosmetic Act)
2 or narcotic drug (as defined in section 4731(a) of this title); or
3 “(6) has been adjudicated a mental defective.

4 “(e) UNLAWFUL DISTRIBUTION TO PERSONS IN CERTAIN STATES.—It
5 shall be unlawful for any licensee knowingly to distribute any explo-
6 sive materials to any person in any State where the purchase, posses-
7 sion, or use by such person of such explosive materials would be in
8 violation of any State law or any published ordinance applicable at
9 the place of distribution.

10 “(f) FAILURE TO KEEP RECORDS.—It shall be unlawful for any
11 licensee or permittee knowingly to manufacture, import, purchase, dis-
12 tribute, or receive explosive materials without making such records as
13 the Secretary may by regulation require, including, but not limited to,
14 a statement of intended use, the name, date, place of birth, social secu-
15 rity number or taxpayer identification number, and place of residence
16 of any natural person to whom explosive materials are distributed. If
17 explosive materials are distributed to a corporation or other business
18 entity, such records shall include the identity and principal and local
19 places of business and the name, date, place of birth, and place of resi-
20 dence of the natural person acting as agent of the corporation or other
21 business entity in arranging the distribution.

22 “(g) FALSE ENTRIES IN RECORDS.—It shall be unlawful for any
23 licensee or permittee knowingly to make any false entry in any record
24 which he is required to keep pursuant to this section or regulations
25 promulgated under section 10037 of this title.

26 “(h) DEALING IN STOLEN EXPLOSIVES.—It shall be unlawful for any
27 person to receive, conceal, transport, ship, store, barter, sell, or dispose
28 of any explosive materials knowing or having reasonable cause to be-
29 lieve that such explosive materials were stolen.

30 “(i) UNLAWFUL SHIPMENT OR TRANSPORTATION OF EXPLOSIVES BY
31 CERTAIN PERSONS.—It shall be unlawful for any person—

32 “(1) who is under indictment for, or who has been convicted in
33 any court of, a crime punishable by imprisonment for a term
34 exceeding one year;

35 “(2) who is a fugitive from justice;

36 “(3) who is an unlawful user of or addicted to marihuana (as
37 defined in section 4761 of this title) or any depressant or stimulant
38 drug (as defined in section 201(v) of the Federal Food, Drug,
39 and Cosmetic Act) or narcotic drug (as defined in section 4731
40 (a) of this title); or, . . .

“(4) who has been adjudicated as a mental defective or who has been committed to a mental institution ;
to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

“(j) UNLAWFUL STORAGE OF EXPLOSIVES.—It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

“(k) FAILURE TO REPORT THEFT OR LOSS.—It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

“§ 10033. Licenses and user permits

“(a) IN GENERAL.—An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed \$200 for each license or permit. Each license or permit shall be valid for not more than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

“(b) CONDITIONS FOR ISSUANCE.—Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

“(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 10032 (d) ;

“(2) the applicant has not knowingly violated any of the provisions of this chapter or regulations issued hereunder ;

1 “(3) the applicant has in a State premises from which he
2 conducts or intends to conduct business;

3 “(4) the applicant has a place of storage for explosive materials
4 which meets such standards of public safety and security against
5 theft as the Secretary by regulations shall prescribe; and

6 “(5) the applicant has demonstrated and certified in writing
7 that he is familiar with all published State laws and local
8 ordinances relating to explosive materials for the location in
9 which he intends to do business.

10 “(c) PERIOD FOR APPROVAL.—The Secretary shall approve or deny
11 an application within a period of forty-five days beginning on the
12 date such application is received by the Secretary.

13 “(d) REVOCATION.—The Secretary may revoke any license or permit
14 issued under this section if in the opinion of the Secretary the holder
15 thereof has violated any provision of this chapter or any rule or
16 regulation prescribed by the Secretary under this chapter, or has
17 become ineligible to acquire explosive materials under section 10032
18 (d). The Secretary’s action under this subsection may be reviewed
19 only as provided in subsection (e) (2) of this section.

20 “(e) APPEAL OF REVOCATION.—(1) Any person whose application is
21 denied or whose license or permit is revoked shall receive a written
22 notice from the Secretary stating the specific grounds upon which such
23 denial or revocation is based. Any notice of a revocation of a license
24 or permit shall be given to the holder of such license or permit prior
25 to or concurrently with the effective date of the revocation.

26 “(2) If the Secretary denies an application for, or revokes a license,
27 or permit, he shall, upon request by the aggrieved party, promptly
28 hold a hearing to review his denial or revocation. In the case of a
29 revocation, the Secretary may upon a request of the holder stay the
30 effective date of the revocation. A hearing under this section shall be
31 at a location convenient to the aggrieved party. The Secretary shall
32 give written notice of his decision to the aggrieved party within a
33 reasonable time after the hearing. The aggrieved party may, within
34 sixty days after receipt of the Secretary’s written decision, file a
35 petition with the United States court of appeals for the district in
36 which he resides or has his principal place of business for a judicial
37 review of such denial or revocation, pursuant to sections 701–706 of
38 title 5.

39 “(f) INSPECTION OF RECORDS.—Licensees and permittees shall make
40 available for inspection at all reasonable times their records kept

pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who has purchased or received explosive materials, together with a description of such explosive materials.

“(g) **POSTING OF LICENSES.**—Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

“§ 10034. **Penalties**

“(a) **IN GENERAL.**—Any person who violates any provision of this chapter (other than subsection (a) (3) (B), (b), (c), (d), or (e) of section 10032) shall be guilty of a Class E felony, except that the maximum fine for violation of any provision of subsections (a) through (i) of section 10032 (other than subsection (a) (3) (B), (b), (c), (d), or (e) of such section) shall be \$10,000.

“(b) **FORFEITURE.**—Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of this title relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of this title, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

“§ 10035. **Defenses; relief from disabilities**

“(a) **DEFENSES.**—It shall be a defense to any prosecution brought under this chapter, that the provisions of this chapter do not apply to the activity or materials on which such prosecution is based. The provisions of this chapter shall not apply to—

1 “(1) any aspect of the transportation of explosive materials
2 via railroad, water, highway, or air which are regulated by the
3 United States Department of Transportation and agencies
4 thereof;

5 “(2) the use of explosive materials in medicines and medicinal
6 agents in the forms prescribed by the official United States Phar-
7 macopeia, or the National Formulary;

8 “(3) the transportation, shipment, receipt, or importation of
9 explosive materials for delivery to any agency of the United
10 States or to any State or political subdivision thereof;

11 “(4) small arms ammunition and components thereof;

12 “(5) black powder in quantities not to exceed five pounds;

13 “(6) the manufacture under the regulation of the military de-
14 partment of the United States of explosive materials for, or their
15 distribution to or storage or possession by the military or naval
16 services or other agencies of the United States; or to arsenals,
17 navy yards, depots, or other establishments owned by, or operated
18 by or on behalf of, the United States.

19 “(b) RELIEF FROM DISABILITIES.—A person who had been indicted
20 for or convicted of a crime punishable by imprisonment for a term ex-
21 ceeding one year may make application to the Secretary for relief from
22 the disabilities imposed by this chapter with respect to engaging in the
23 business of importing, manufacturing, or dealing in explosive mate-
24 rials, and incurred by reason of such indictment or conviction, and the
25 Secretary may grant such relief if it is established to his satisfaction
26 that the circumstances regarding the indictment or conviction, and the
27 applicant's record and reputation, are such that the applicant will not
28 be likely to act in a manner dangerous to public safety and that the
29 granting of the relief will not be contrary to the public interest. A
30 licensee or permittee who makes application for relief from the dis-
31 abilities incurred under this chapter by reason of indictment or con-
32 viction, shall not be barred by such indictment or conviction from
33 further operations under his license or permit pending final action
34 on an application for relief filed pursuant to this section.

35 **“§ 10036. Additional powers of the Secretary**

36 “The Secretary is authorized to inspect the site of any accident, or
37 fire, in which there is reason to believe that explosive materials were
38 involved, in order that if any such incident has been brought about
39 by accidental means, precautions may be taken to prevent similar
40 accidents from occurring. In order to carry out the purpose of this

subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency.

“§ 10037. Rules and regulations

“The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

“§ 10038. Effect on State law

“No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.”

(B) Chapter 40 and chapter 44 of title 18, United States Code, and title VII of the Omnibus Crime Control and Safe Streets Act of 1968, are repealed.

(C) The table of contents of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following:

**“SUBTITLE I—FIREARMS; POSSESSION OF FIRE-
ARMS BY CERTAIN PERSONS; IMPORTATION,
MANUFACTURE, DISTRIBUTION, AND STOR-
AGE OF EXPLOSIVE MATERIALS**

“Chapter 97. Firearms	10001
“Chapter 98. Possession of firearms by certain persons.....	10021
“Chapter 99. Importation, manufacture, distribution and storage of explosive materials.....	10031.”

PART V—TITLE 27, U.S.C., AMENDMENTS

SEC. 342. (a) Subsection (a) (2) of section 4 of the Federal Alcohol Administration Act (27 U.S.C. 204), is amended by inserting immediately after “finds (A) that” a comma and the following: “subject to the provision of section 1-4A3 of title 18, United States Code,”.

(b) Subsection (b) of section 6 of the Federal Alcohol Administration Act (27 U.S.C. 206(b)), is amended to read as follows:

“(b) **PENALTY.**—Any person who violates the requirements of para-

graph (2) or (3) of subsection (a) of this section shall, upon conviction thereof, be guilty of a Class E felony, except that the maximum fine shall be \$5,000. Such person so convicted shall forfeit to the United States all distilled spirits with respect to which the violation occurs and the container thereof."

(c) Section 7 of the Federal Alcohol Administration Act (27 U.S.C. 207), is amended by deleting "misdemeanor and upon conviction thereof be fined not more than \$1,000 for each offense." and inserting in lieu thereof "regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$1,000 for each offense."

(d) Subsection (d) of section 8 of the Federal Alcohol Administration Act (27 U.S.C. 208(d)), is amended by inserting immediately after "shall be" the following: "guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, and shall be".

SEC. 343. (a) This section may be cited as the "Miscellaneous Liquor Traffic Crimes Act of 1973".

(b) The Secretary of the Treasury shall enforce the provisions of this section. Regulations to carry out such provisions shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. This section shall not apply to the Canal Zone.

(c) Whoever imports, brings, or transports any intoxicating liquor into any State, District, or Possession in which all sales, except for scientific, sacramental, medicinal, or mechanical purposes, of intoxicating liquor containing more than 4 per centum of alcohol by volume or 3.2 per centum of alcohol by weight are prohibited, otherwise than in the course of continuous interstate transportation through such State, District, or Possession, shall (1) if such liquor is not accompanied by such permits, or licenses therefor as may be required by the laws of such State, District, or Possession or (2) if all importation, bringing, or transportation of intoxicating liquor into such State, District, or Possession is prohibited by the laws thereof, be guilty of a Class E felony, except that the maximum fine shall be \$1,000. In the enforcement of this subsection, the definition of intoxicating liquor contained in the laws of the respective States, Districts, or Possessions shall be applied, but only to the extent that sales of such intoxicating liquor (except for scientific, sacramental, medicinal, and mechanical purposes) are prohibited therein.

(d) Whoever knowingly ships into any place within the United States any package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such shipment is accompanied by a copy of a bill of lading, or other document showing the name of the consignee, the nature of its contents, and the quantity contained therein, shall be guilty of a Class E felony, except that the maximum fine shall be \$1,000.

(e) Whoever, being an officer, agent, or employee of any railroad company, express company, or other common carrier, knowingly delivers to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, or other fermented liquor or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, which has been shipped into any place within the United States, shall be guilty of a Class E felony, except that the maximum fine shall be \$1,000.

(f) Any railroad or express company, or other common carrier which, or any person who, in connection with the transportation of any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, into any State, District or Possession of the United States, which prohibits the delivery or sale therein of such liquor, collects the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or in any manner acts as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.

(g) All liquor involved in any violation under this section, the containers of such liquor, and every vehicle or vessel used in the transportation thereof, shall be seized and forfeited and such property or its proceeds disposed of in accordance with the laws relating to seizures, forfeitures, and dispositions of property or proceeds, for violation of the internal revenue laws. As used in this subsection, "vessel" includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; and "vehicle" includes animals and every description of carriage or other contrivance

1 used, or capable of being used, as a means of transportation on land
2 or through the air.

3 PART W—TITLE 28, U.S.C., AMENDMENTS

4 SEC. 344. (a) Section 454 of title 28, United States Code, is amended
5 by deleting “high misdemeanor” and inserting in lieu thereof “Class
6 E felony”.

7 (b)(1) Section 636(a)(2) of title 28, United States Code, is
8 amended by deleting “section 3146” and inserting in lieu thereof
9 “section 4305 of chapter 43”.

10 (2) Section 636(a)(3) of title 28, United States Code, is amended
11 by deleting “3401,” and inserting in lieu thereof “4801 of chapter
12 48 of”.

13 (3) Section 636(c) of title 28, United States Code, is amended by
14 deleting “3402” and inserting in lieu thereof “4802 of chapter 48”.

15 (c) Section 1355 of title 28, United States Code, is amended by
16 inserting immediately before the word “fine” the word “civil”.

17 (d) The last sentence of section 1864(b) of title 28, United States
18 Code, is repealed.

19 (e) Section 1865(b)(5) of title 28, United States Code, is amended
20 by inserting immediately before “has been convicted” a comma and
21 the following: “subject to the provisions of 1-4A3 of title 18, United
22 States Code,”.

23 (f) The last sentence of section 1867(f) of title 28, United States
24 Code, is repealed.

25 (g) Section 1869(h) of title 28, United States Code, is amended by
26 inserting immediately before “has been convicted in any State” a
27 comma and the following: “subject to the provisions of 1-4A3 of title
28 18, United States Code,”.

29 (h) Section 1918(a) of title 28, United States Code, is amended by
30 deleting “fine” and inserting in lieu thereof “penalty”.

31 (i) Section 2321 of title 28, United States Code, is amended by
32 deleting “fines,”.

33 (j) The second paragraph of section 2678 of title 28, United States
34 Code, is amended by deleting “fined not more than \$2,000 or im-
35 prisoned not more than one year or both.” and inserting in lieu thereof
36 “guilty of a Class E felony, except that the maximum fine shall be
37 \$2,000.”.

38 (k) (1) Section 2901(c) of title 28, United States Code, is amended
39 to read as follows:

1 “(c) ‘Crime of violence’ includes manslaughter, murder, rape, ag-
2 gravated kidnapping, kidnapping, armed robbery, robbery, armed
3 burglary, burglary, theft by threat of violence, maiming, aggravated
4 assault, aggravated arson, and arson, or an attempt or conspiracy to
5 commit any of the foregoing offenses.”

6 (2) Section 2901(e) of title 28, United States Code, is amended by
7 deleting “section 1” and inserting in lieu thereof “section 1-1A4(26)”.

8 (1) Section 2902(e) of title 28, United States Code, is repealed.

9 Sec. 345. (a) Section 1862 of title 28, United States Code, is
10 amended by adding at the end thereof the following new paragraph:

11 “No citizen possessing all other qualifications which are or may be
12 prescribed by law shall be disqualified for service as a grand or petit
13 juror in any court of the United States, or of any State on account
14 of race, color, or previous condition of servitude; and whoever, being
15 an officer or other person charged with any duty in the selection or
16 summoning of jurors, excludes or fails to summons any citizen for
17 such cause, shall be guilty of a violation, except that the maximum fine
18 shall be \$5,000.”.

19 (b) (1) Chapter 119 of title 28, United States Code, is amended by
20 adding at the end thereof the following new section:

21 **“§ 1827. Purchase of claims for fees by court officials**

22 “Whoever, being a judge, clerk, or deputy clerk of any court of the
23 United States or a possession thereof, or a United States district
24 attorney, assistant attorney, marshal, deputy marshal, magistrate, or
25 other person holding any office or employment, or position of trust or
26 profit under the United States, directly or indirectly purchases at
27 less than the full face value thereof, any claim against the United
28 States for the fee, mileage, or expenses of any witness, juror, deputy
29 marshal, or any other officer of such court, shall be guilty of a viola-
30 tion, except that the maximum fine shall be \$1,000.”.

31 (2) The chapter analysis of chapter 119 of title 28, United States
32 Code, is amended by adding at the end thereof the following new
33 item:

34 “1827. Purchase of claims for fees by court officials.”.

35 (c) (1) Chapter 57 of title 28, United States Code, is amended by
36 adding at the end thereof the following new sections:

37 **“§ 964. Court officers generally**

38 “Whoever, being a United States marshal, clerk, receiver, referee,
39 trustee, or other officer of a United States court, or any deputy, assist-
40 ant, or employee of any such officer, retains or after the demand by

1 the party entitled thereto, unlawfully retains any money coming into
2 his hands by virtue of his official relation, position or employment,
3 where the offense is not otherwise punishable by enactment of Con-
4 gress, shall be guilty of a Class E felony, except that, if the amount
5 embezzled does not exceed \$100, the maximum fine shall be \$1,000, and
6 if the amount so embezzled exceeds \$100, the maximum fine shall be
7 double the value of the money so embezzled.

8 "It shall not be a defense that the accused person had any interest
9 in such money or fund.

10 **"§ 965. Court officer depositing registry moneys**

11 "Whoever, being a clerk or other officer of a court of the United
12 States, fails to deposit promptly any money belonging in the registry
13 of the court, or paid into court or received by the officers thereof, with
14 the Treasurer or a designated depository of the United States, in the
15 name and to the credit of such court, or retains any such money, shall
16 be guilty of a Class E felony, except that, if the amount embezzled does
17 not exceed \$100, the maximum fine shall be \$1,000, and if the amount
18 so embezzled exceeds \$100, the maximum fine shall be the value of the
19 money so embezzled.

20 "This section shall not prevent the delivery of any such money upon
21 security, according to agreement of parties, under the direction of the
22 court.

23 **"§ 966. Receiving loan from court officer**

24 "Whoever, knowingly receives from a clerk or other officer of a court
25 of the United States, as a deposit, loan, or otherwise, any money be-
26 longing in the registry of such court, shall be guilty of a Class E felony,
27 except that, if the amount embezzled does not exceed \$100, the maxi-
28 mum fine shall be \$1,000, and if the amount so embezzled exceeds \$100,
29 the maximum fine shall be the value of the money so embezzled.

30 **"§ 967. Accounts of court officers**

31 "Whoever, being a clerk or assistant clerk of a court, or other per-
32 son charged by law with a duty to render true accounts of moneys
33 received in any proceeding relating to citizenship, naturalization, or
34 registration of aliens or to pay over any balance of such moneys due
35 to the United States, knowingly neglects to do so within thirty days
36 after said payment shall become due and demand therefor has been
37 made, shall be guilty of a Class E felony, except that the maximum fine
38 shall be \$5,000.

39 **"§ 968. Nepotism in appointment of receiver or trustee**

“Whoever, being a judge of any court of the United States, appoints as receiver, or trustee, any person related to such judge by consanguinity or affinity within the fourth degree, shall be guilty of a Class E felony, except that the maximum fine shall be \$10,000.

“§ 969. Receiver mismanaging property

“Whoever, being a receiver, trustee, or manager in possession of any property in any cause pending in any court of the United States, knowingly fails to manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof, shall be guilty of a Class E felony, except that the maximum fine shall be \$3,000.

“§ 970. Clerk of United States District Court

“Whoever, being a clerk of a district court of the United States, knowingly refuses or neglects to make or forward any report, certificate, statement, or document as required by law, shall be guilty of a Class E felony, except that the maximum fine shall be \$1,000.”

(2) The chapter analysis of chapter 57 of title 2, United States Code, is amended by adding at the end thereof the following new items:

“964. Court officers generally.

“965. Court officer depositing registry moneys.

“966. Receiving loan from court officer.

“967. Accounts of court officers.

“968. Nepotism in appointment of receiver or trustee.

“969. Receiver mismanaging property.

“970. Clerk of United States District Court.”

PART X—TITLE 29, U.S.C., AMENDMENTS

SEC. 346. (a) Section 12 of the National Labor Relations Act (49 Stat. 456), is repealed.

(b) Subsection (d) of section 302 of the Labor Management Relations Act (61 Stat. 157), is amended to read as follows:

“(d) Any person who knowingly violates any of the provisions of this section shall be guilty of a Class D felony, except that the maximum fine shall be \$10,000.”

(c) (1) Section 15(a)(5) of the Fair Labor Standards Act of 1938 (52 Stat. 1069), is amended by striking “filed or”.

(2) Subsection (a) of section 16 of such Act is amended to read as follows:

“Any person who knowingly violates any of the provisions of section 15 shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code.”

1 (d) Subsection (a) of section 10 of the Portal-to-Portal Act of 1947
2 (1 Stat. 89), is amended by striking "no employer shall be subject to
3 any liability or punishment for or on account of failure of the em-
4 ployer" and inserting in lieu thereof "it shall be an affirmative defense
5 if an employer shows that the failure".

6 (e) (1) Subsection (a) of section 9 of the Welfare and Pension
7 Plans Disclosure Act (72 Stat. 1002), is amended to read as follows:

8 "(a) Any person who knowingly violates any provision of sections
9 5 or 8 of this Act shall be guilty of a Class E felony."

10 (2) Section 12 of such Act is amended by striking "no person shall
11 be subject" and inserting in lieu thereof "it shall be an affirmative
12 defense".

13 (3) Section 14(e) (1) of such Act is amended to read as follows:

14 "(e) (1) Any member of the Council is hereby exempted with
15 respect to such appointment from the operation of sections 2-6F1 and
16 2-6F3 of title 18, United States Code, except as otherwise specified in
17 paragraph (2) of this subsection."

18 (f) (1) Section 209(a) of the Labor Management Reporting and
19 Disclosure Act of 1959 (73 Stat. 529), is amended to read as follows:

20 "SEC. 209. (a) Any person who knowingly violates this title shall
21 be guilty of a Class E felony, except that the maximum fine shall be
22 \$10,000."

23 (2) Subsection (b) of such section is repealed.

24 (3) Subsection (c) of section 301 of such Act is amended to read
25 as follows:

26 "(c) Any person who knowingly violates this section shall be
27 guilty of a Class E felony, except that the maximum fine shall be
28 \$10,000."

29 (4) Subsection (d) of such section is amended to read as follows:

30 "Any person who knowingly makes any false entry in or knowingly
31 withholds, conceals, or destroys any documents, books, records, re-
32 ports or statements upon which such report is based shall be guilty of a
33 Class E felony, except that the maximum fine shall be \$10,000."

34 (5) Subsection (b) of section 303 of such Act is amended to read as
35 follows:

36 "(b) Any person who knowingly violates this section shall be guilty
37 of a Class E felony, except that the maximum fine shall be \$10,000."

38 (6) Subsection (c) of section 501 of such Act is repealed.

39 (7) Subsection (b) of section 502 of such Act is amended to read
40 as follows:

1 “(b) Any person who knowingly violates this section shall be guilty
2 of a Class E felony, except that the maximum fine shall be \$10,000.”

3 (8) Subsection (c) of section 503 of such Act is amended to read as
4 follows: “Any person who knowingly violates this section shall be
5 guilty of a Class E felony, except that the maximum fine shall be
6 \$5,000.”

7 (9) Section (a) of section 504 of such Act is amended to read as
8 follows:

9 “(a) No person who is or has been a member of the Communist
10 Party or who has been convicted of or served any part of a prison
11 term resulting from his conviction of armed robbery, robbery, bribery,
12 theft (which constitutes a felony), armed burglary, burglary, a drug
13 felony, aggravated arson, arson, murder, manslaughter, rape, maim-
14 ing, aggravated assault, extortion, coercion, a violation of title 2 or 3
15 of this Act or an attempt or conspiracy to commit any such crimes
16 shall serve—

17 “(1) as an officer, director, trustee, member of any executive
18 board or similar governing body, business agent, manager, or-
19 ganizer, or other employee (other than as an employee perform-
20 ing exclusively clerical or custodial duties) of any labor organiza-
21 tion, or

22 “(2) as a labor relations consultant to a person engaged in an
23 industry or actively affecting commerce or an officer, agent, direc-
24 tor, or employee (other than as an employee performing exclu-
25 sively clerical or custodial duties) of any group or association or
26 employer dealing with any labor organization,

27 during or for 5 years after the termination of his membership in the
28 Communist Party or for 5 years after such conviction or after the
29 end of such imprisonment, unless prior to the end of such 5-year pe-
30 riod, in the case of a person so convicted or imprisoned, (A) his citi-
31 zenship rights having been revoked as the result of such conviction
32 have been fully restored, or (B) the Parole Commission of the United
33 States Department of Justice determines that such person's service in
34 any capacity referred to in clause (1) or (2) would not be contrary to
35 the provisions of this Act. Prior to making any such determination,
36 the Commission shall hold an administrative hearing and shall give
37 notice of such proceeding by certified mail to the State, county, and
38 Federal prosecuting office in the jurisdiction or jurisdictions in which
39 such person was convicted. The Board's determination in any such
40 determination shall be final. No labor organization or office thereof

shall knowingly permit any person to assume or hold any office or paid position in violation of this subsection.”

(10) Subsection (b) of such section is amended to read as follows:

“(b) Any person who knowingly violates this section shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.”

(11) Section 602 of such Act is repealed.

(12) Section 610 of such Act is amended to read as follows:

“SEC. 610. It shall be unlawful for any person through the use of force or violence or threat of use of force or violence to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of this Act. Any person who knowingly violates this section shall be guilty of a Class E felony.”

(g) Section 10 of the Age Discrimination in Employment Act of 1967 is repealed.

PART Y—TITLE 30, U.S.C., AMENDMENTS

SEC. 347. (a) Section 9 of the Act of October 3, 1961 (30 U.S.C. 689), is repealed.

(b) Section 10 (k) of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 729 (K)), is amended by adding at the end thereof the following new sentence: “The provisions of section 2-6C2 of title 18, United States Code, shall be applicable with respect to any subpena issued pursuant to this section.”.

(c) Section 14 (b) of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 733(b)), is amended (1) by deleting “upon conviction thereof be punished for each such offense by a fine of not less than \$100, or more than \$3,000, or by imprisonment not to exceed sixty days, or both.” and inserting in lieu thereof “be guilty of a misdemeanor, except that the minimum fine shall be \$100 and the maximum fine shall be \$3,000, and the maximum prison term shall be sixty days.”; and (2) by deleting the last sentence thereof.

(d) Section 109 of title I of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 819), is amended as follows:

(1) Subsection (b) of such section is amended (1) by deleting “willfully” and inserting in lieu thereof “knowingly”; and (2) by deleting “, upon conviction, be punished by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this Act, punishment shall be by a fine of not more than \$50,000 or by imprisonment for not more

1 than \$50,000 or by imprisonment for not more than five years, or by
 2 both.” and inserting in lieu thereof “be guilty of a Class D felony, ex-
 3 cept that the maximum fine shall be \$25,000. In the event that the
 4 conviction is for a violation committed after the first conviction of
 5 such operator under this Act, the maximum fine shall be \$50,000.”

6 PART Z—TITLE 31, U.S.C., AMENDMENTS

7 SEC. 348. (a) Section 243 of the Revised Statutes (31 U.S.C. 155,
 8 163), is amended (1) by deleting “a high misdemeanor and forfeit to
 9 the United States the penalty of three thousand dollars and shall upon
 10 conviction be removed from office, and forever thereafter be incapable
 11 of holding any office under the United States;” and inserting in lieu
 12 thereof “a violation, except that the maximum fine shall be \$3,000;”;
 13 and (2) by adding at the end thereof the following new sentence:
 14 “Any offense under this section shall be deemed an offense within the
 15 purview of section 1-4A3 of title 18, United States Code.”

16 (b) Section 8 of the Military Personnel and Civilian Employees’
 17 Claims Act of 1964 (31 U.S.C. 243), is amended by deleting “a misde-
 18 meanor and upon conviction thereof shall be fined in any sum not ex-
 19 ceeding \$1,000.” and inserting in lieu thereof “a violation, except that
 20 the maximum fine shall be \$1,000.”

21 (c) Section 105 (b) of the Act of July 23, 1965 (31 U.S.C. 395 (b)),
 22 is amended by deleting “fined not more than \$10,000, or imprisoned not
 23 more than five years, or both.” and inserting in lieu thereof “guilty of a
 24 Class D felony, except that the maximum fine shall be \$10,000.”

25 (d) Section 3679(i) of the Revised Statutes (31 U.S.C. 665 (i)), is
 26 amended (1) by deleting “and willfully”; and (2) by deleting “, upon
 27 conviction, be fined not more than \$5,000 or imprisoned for not more
 28 than two years, or both.” and inserting in lieu thereof “be guilty of a
 29 Class E felony, except that the maximum fine shall be \$5,000.”

30 (e) Section 244 of the Revised Statutes (31 U.S.C. 1018), is amended
 31 by deleting “a misdemeanor, and punished by a fine of \$500 and re-
 32 moval from office,” and inserting in lieu thereof “a violation, except
 33 that the maximum fine shall be \$500. Any offense under this section
 34 shall be deemed an offense within the purview of section 1-4A3 of title
 35 18, United States Code.”

36 SEC. 349 (a) Title I of the Coinage Act of 1965 (79 Stat. 255), is
 37 amended by adding at the end thereof the following new section:

38 “Sec. 109. (a) Whoever makes, issues, circulates, or pays out any
 39 note, check, memorandum, token, or other obligation for a less sum

1 than \$1, intended to circulate as money or to be received or used in lieu
2 of lawful money of the United States, shall be guilty of a misde-
3 meanor, except that the maximum fine shall be \$500.

4 “(b) Whoever lends or borrows money or credit upon the security of
5 such coins of the United States as the Secretary may from time to time
6 designate by proclamation published in the Federal Register, during
7 any period designated in such a proclamation, shall be guilty of a Class
8 E felony, except that the maximum fine shall be \$10,000.

9 “(c) Whoever designs, engraves, prints, makes, or executes, or ut-
10 ters, issues, distributes, circulates, or uses any business or professional
11 card, notice, placard, circular, handbill, or advertisement in the like-
12 ness or similitude of any obligation or security of the United States
13 issued under or authorized by any Act of Congress or writes, prints, or
14 otherwise impresses upon or attaches to any such instrument, obliga-
15 tion, or security, or any coin of the United States, any business or
16 professional card, notice, or advertisement, or any notice or advertise-
17 ment whatever, shall be guilty of a violation, except that the maximum
18 fine shall be \$500.

19 “(d) (1) Whoever, within the United States, makes or brings therein
20 from any foreign country, or possesses with intent to sell, give away,
21 or in any other manner uses the same, any token, disk, or device in the
22 likeness or similitude as to design, color, or the inscription thereon of
23 any of the coins of the United States or of any foreign country issued
24 as money, either under the authority of the United States or under
25 the authority of any foreign government, shall be guilty of a viola-
26 tion, except that the maximum fine shall be \$100.

27 “(2) It shall be a defense to any prosecution under this subsection
28 that the action charged was taken under the authority of the Secre-
29 tary or other proper officer of the United States.

30 “(e) All counterfeits of any coins or obligations or other securities
31 of the United States or of any foreign government, or any articles,
32 devices, and other things made, possessed, or used in violation of this
33 section, of sections 2-8D3, 2-8E1, 2-8E2, 2-8E3, 2-8E6 of title 18,
34 United States Code, or of subsection (e) of the Miscellaneous Banking
35 Crimes Act, 1973, or any material or apparatus used or fitted or in-
36 tended to be used, in the making of such counterfeits, articles, devices
37 or things, found in the possession of any person without authority
38 from the Secretary of the Treasury or other proper officer, shall be
39 forfeited to the United States.

1 “Whoever, having the custody or control of any such counterfeits,
2 material, apparatus, articles, devices, or other things, fails or refuses
3 to surrender possession thereof upon request by any authorized agent
4 of the Treasury Department, or other proper officer, shall be guilty of
5 a misdemeanor, except that the maximum fine shall be \$100.

6 “Whenever, except as hereinafter in this section provided, any per-
7 son interested in any article, device, or other thing, or material or ap-
8 paratus seized under this section files with the Secretary of the
9 Treasury, before the disposition thereof, a petition for the remission or
10 mitigation of such forfeiture, the Secretary of the Treasury, if he finds
11 that such forfeiture was incurred without criminal negligence or with-
12 out any intention on the part of the petitioner to violate the law, or
13 finds the existence of such mitigating circumstances as to justify the
14 remission or the mitigation of such forfeiture, may remit or mitigate
15 the same upon such terms and conditions as he deems reasonable and
16 just.

17 “If the seizure involves offenses other than offenses against the coin-
18 age, currency, obligations, or securities of the United States or any
19 foreign government, the petition for the remission or mitigation of
20 forfeiture shall be referred to the Attorney General who may remit or
21 mitigate the forfeiture upon such terms as he deems reasonable and
22 just.

23 “(f) The following are permitted :

24 “(1) the printing, publishing, or importation, or the making
25 or importation of the necessary plates for such printing or pub-
26 lishing, of illustrations of—

27 “(A) postage stamps of the United States,

28 “(B) revenue stamps of the United States,

29 “(C) any other obligation or other security of the United
30 States, and

31 “(D) postage stamps, revenue stamps, notes, bonds, and
32 any other obligation or other security of any foreign govern-
33 ment, bank, or corporation.

34 for philatelic, numismatic, educational, historical, or newsworthy
35 purposes in articles, books, journals, newspapers, or albums (but
36 not for advertising purposes, except illustrations of stamps
37 and paper money in philatelic or numismatic advertising of legit-
38 imate numismatists and dealers in stamps or publishers of or
39 dealers in philatelic or numismatic articles, books, journals, news-
40 papers, or albums). Illustrations permitted by the foregoing pro-

visions of this section shall be made in accordance with the following conditions—

“(i) all illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

“(ii) all illustrations (including illustrations of uncanceled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

“(iii) the negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

“(2) the making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

“For the purposes of this section, the term ‘postage stamp’ includes postage meter stamps.”

PART AA—TITLE 33, U.S.C., AMENDMENTS

SEC. 350. (a) Section 4 of the Act of August 4, 1894 (33 U.S.C. 1), is amended (1) by deleting “and every corporation which” and inserting in lieu thereof “who”; and (2) by deleting “(in the case of a natural person)”.

(b) Section 5 of the Act of March 3, 1909 (33 U.S.C. 2), is amended by deleting “and any willful violation of any rule or regulation made by the Secretary of the Army in pursuance of this section shall be deemed a misdemeanor, for which the owner or owners, agent or agents, master or pilot of the vessel so offending shall be separately or col-

lectively responsible, and on conviction thereof shall be punished by a fine of not less than \$100, nor exceeding \$500, or by imprisonment for not exceeding three months, or by both fine and imprisonment, at the discretion of the court" and inserting in lieu thereof "and any person knowingly violating any rule or regulation made by the Secretary of the Army pursuant to this section shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the minimum fine shall be \$100 and the maximum fine shall be \$500."

(c) Section 3 of chapter XIX of the Act of July 9, 1918 (33 U.S.C. 3), is amended by deleting "and every corporation which shall willfully violate any regulations made by the said Secretary pursuant to this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court" and inserting in lieu thereof "shall violate any regulation made by the said Secretary pursuant to this section shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500.

(d) Subsection (c) of the Act of October 30, 1963 (33 U.S.C. 157a), is amended by deleting "liable to a penalty not exceeding \$500. In addition, any vessel navigated or operated in violation of the regulations established pursuant to this section shall be liable to a penalty of \$500," and inserting in lieu thereof "guilty of a violation, except that the maximum fine shall be \$500. In addition, any vessel navigated or operated in violation of the regulations established pursuant to this section shall be guilty of a violation, except that the fine shall be \$500, and".

(e) Section 3 of the Act of June 7, 1897 (33 U.S.C. 158), is amended by deleting "liable to a penalty of not exceeding \$500, and" and inserting "guilty of a violation, except that the maximum fine shall be \$500, and shall be liable".

(f) (1) Section 2 (a) of the Act of February 8, 1895 (33 U.S.C. 244), is amended by deleting "liable to a penalty not exceeding \$500" and inserting "guilty of a violation, except that the maximum fine shall be \$500".

(2) Section 2 (b) of the Act of February 8, 1895 (33 U.S.C. 244), is amended by deleting "liable to a penalty of \$500," and inserting "guilty of a violation, except that the fine shall be \$500,".

1 (g) Section 4233B of the Revised Statutes (33 U.S.C. 354), is
2 amended by deleting “liable to a penalty not exceeding \$500, and” and
3 inserting in lieu thereof “guilty of a violation, except that the maxi-
4 mum fine shall be \$500, and shall be liable”.

5 (h) Section 2 of the Act of September 4, 1890 (33 U.S.C. 368), is
6 amended by deleting “misdemeanor, and shall be liable to a penalty of
7 \$1,000, or imprisonment for a term not exceeding two years;” and in-
8 serting in lieu thereof “Class E felony, except that the maximum fine
9 shall be \$1,000;”.

10 (i) Sections 4300, 4301, 4302, 4303, 4304, and 4305 of the Revised
11 Statutes (33 U.S.C. 391–396), are repealed.

12 (j) Section 12 of the Rivers and Harbors Appropriation Act of
13 1899 (33 U.S.C. 406), is amended (1) by deleting “and every corpora-
14 tion;” and (2) by deleting “misdemeanor, and on conviction thereof
15 shall be punished by a fine not exceeding \$2,500 nor less than \$500, or
16 by imprisonment (in the case of a natural person) not exceeding one
17 year, or by both such punishments, in the discretion of the court.” and
18 inserting in lieu thereof “regulatory offense under section 2–8F6 of
19 title 18, United States Code, except that the minimum fine shall be
20 \$500 and the maximum fine shall be \$2,500.”.

21 (k) Section 2 of the Act of May 9, 1900 (33 U.S.C. 410), is amended
22 by deleting “misdemeanor, and every person convicted of such viola-
23 tion shall be punished by a fine of not exceeding \$2,500 nor less than
24 \$500, or by imprisonment (in case of a natural person) for not less
25 than thirty days nor more than one year, or by both such fine and
26 imprisonment, in the discretion of the court:” and inserting in lieu
27 thereof “regulatory offense under section 2–8F6 of title 18, United
28 States Code, except that the minimum fine shall be \$500 and the
29 maximum fine shall be \$2,500:”.

30 (l) Section 16 of the Rivers and Harbors Appropriations Act of
31 1899 (33 U.S.C. 411), is amended (1) by deleting “and every corpora-
32 tion”; (2) by deleting “, or that shall knowingly aid, abet, authorize,
33 or instigate a violation of”; (3) by deleting “misdemeanor, and on
34 conviction thereof shall be punished by a fine not exceeding \$2,500 nor
35 less than \$500, or by imprisonment (in the case of a natural person)
36 for not less than thirty days or more than one year, or by both such
37 fine and imprisonment, in the discretion of the court,” and inserting in
38 lieu thereof “Class E felony, except that the minimum fine shall be
39 \$500 and the maximum fine shall be \$2,500, and the minimum prison
40 term shall be thirty days;”; (4) by deleting “willfully” wherever it

1 appears therein and inserting in lieu thereof "knowingly"; and (5) by
2 deleting "be deemed guilty of a violation of this Act, and shall upon
3 conviction be punished as hereinbefore provided in this section, and
4 shall also".

5 (m) Section 4 of the Act of March 3, 1905 (33 U.S.C. 419), is
6 amended (1) by deleting "or corporation which" and inserting "who";
7 and (2) by deleting "misdemeanor and shall be subject to the penalties
8 prescribed in section sixteen of the rivers and harbor Act of March
9 third, eighteen hundred and ninety-nine, for violation of the provi-
10 sions of section thirteen of the said Act:" and inserting in lieu thereof
11 "regulatory offense under section 2-8F6 of title 18, United States
12 Code, except that the minimum fine shall be \$500 and the maximum
13 fine shall be \$2,500:".

14 (n) The Act of June 23, 1910 (33 U.S.C. 421), is amended (1) by
15 deleting ", or cause, suffer, or procure, to be thrown, discharged,
16 dumped, or deposited,"; and (2) by deleting the colon immediately
17 preceding the Proviso and all that follows thereafter and inserting in
18 lieu thereof a period and the following: "Any person violating any
19 provision of this Act shall be guilty of a violation, except that the
20 maximum fine shall be \$1,000. It shall be a defense to any prosecution
21 under this Act that the action complained of involved work in con-
22 nection with the construction, repair, and protection of breakwaters
23 and other structures built in aid of navigation, or for the purpose of
24 obtaining water supply.".

25 (o) Section 1 of the Act of June 29, 1888 (33 U.S.C. 441), is amended
26 by deleting everything after the word "forbidden" and inserting in
27 lieu thereof a comma and the following: "and every person engaged
28 in a violation of this section shall be guilty of a Class E felony, except
29 that the minimum fine shall be \$250 and the maximum fine shall be
30 \$2,500, and the minimum prison term shall be thirty days. One-half
31 of any such fine shall be paid to the person or persons giving informa-
32 tion which leads to conviction of this Class E felony.".

33 (p) (1) The first paragraph of section 3 of the Act of June 29,
34 1888 (33 U.S.C. 443), is amended by deleting "a misdemeanor, and
35 on conviction thereof shall be punished by a fine of not more than one
36 thousand nor less than five hundred dollars," and inserting in lieu
37 thereof "a violation, except that the minimum fine shall be five
38 hundred dollars and the maximum fine shall be one thousand dollars,".

39 (2) The second paragraph of section 3 of the Act of June 29, 1888

1 (33 U.S.C. 444), is amended (1) by deleting "misdemeanor," and
2 inserting in lieu thereof "Class E felony,".

3 (3) The third paragraph of section 3 of the Act of June 29, 1888
4 (33 U.S.C. 445), is amended by deleting "liable upon conviction
5 thereof to a penalty of not more than five hundred dollars." and in-
6 serting in lieu thereof "guilty of a violation, except that the maximum
7 fine shall be five hundred dollars.".

8 (4) The fifth paragraph of section 3 of the Act of June 29, 1888
9 (33 U.S.C. 447), is repealed.

10 (5) The sixth paragraph of section 3 of the Act of June 29, 1888
11 (33 U.S.C. 448), is amended by deleting "liable to a fine of not more
12 than five hundred dollars nor less than one hundred dollars." and in-
13 serting in lieu thereof "guilty of a violation, except that the minimum
14 fine shall be one hundred dollars and the maximum fine shall be five
15 hundred dollars.".

16 (q) Section 2 of the Rivers and Harbors Appropriations Act of
17 1894 (33 U.S.C. 452), is amended (1) by deleting "or persons" wher-
18 ever it appears therein; and (2) by deleting "misdemeanor, and on
19 conviction thereof shall be punished by fine or imprisonment, or both,
20 such fine to be not more than two hundred and fifty dollars nor less
21 than fifty dollars, and the imprisonment to be not more than six
22 months nor less than thirty days, either or both united, as the judge
23 before whom conviction is obtained shall decide." and inserting in
24 lieu thereof "misdemeanor, except that the minimum fine shall be
25 fifty dollars and the maximum fine shall be two hundred and fifty
26 dollars, and the minimum prison term shall be thirty days.".

27 (r) Section 3 of the Act of March 6, 1896 (33 U.S.C. 474), is
28 amended (1) by deleting "penalty" and inserting "civil penalty";
29 and (2) by deleting "fine" and inserting "civil penalty".

30 (s) Section 5 of the Act of March 23, 1906 (33 U.S.C. 495), is
31 amended by deleting "a misdemeanor and on conviction thereof shall
32 be punished in any court of competent jurisdiction by a fine not ex-
33 ceeding \$5,000," and inserting in lieu thereof "a violation, except that
34 the maximum fine shall be \$5,000,".

35 (t) Section 5 of the Rivers and Harbors Appropriation Act of
36 1894 (33 U.S.C. 499), is amended (1) by deleting "willfully" and in-
37 serting "knowingly"; and (2) by deleting "misdemeanor, and on con-
38 viction thereof shall be punished by a fine of not more than two
39 thousand dollars nor less than one thousand dollars, or by imprison-
40 ment (in the case of a natural person) for not exceeding one year, or

1 by both such fine and imprisonment, in the discretion of the court:"
2 and inserting in lieu thereof "Class E felony, except that the minimum
3 fine shall be \$1,000 and the maximum fine shall be \$2,000:".

4 (u) Section 18 of the Rivers and Harbors Appropriation Act of
5 1899 (33 U.S.C. 502), is amended (1) by deleting ", corporation,"
6 whenever it appears therein; (2) by deleting "willfully" and inserting
7 "knowingly"; and (3) by deleting "a misdemeanor and on conviction
8 thereof shall be punished by a fine not exceeding five thousand dol-
9 lars," and inserting "a violation, except that the maximum fine shall
10 be five thousand dollars,".

11 (v) Section 5 of the Act of August 21, 1935 (33 U.S.C. 507), is
12 amended by deleting ", upon conviction thereof, be punished by a fine
13 of not to exceed \$1,000 or by imprisonment for not more than one
14 year, or by both such fine and imprisonment." and inserting in lieu
15 thereof "be guilty of a Class E felony.".

16 (w) Section 9 of the Act of June 21, 1940 (33 U.S.C. 519), is
17 amended (1) by deleting "willfully" and inserting in lieu thereof
18 "knowingly"; and (2) by deleting "a misdemeanor and on conviction
19 thereof shall be punished in any court of competent jurisdiction by
20 a fine not exceeding \$5,000," and inserting in lieu thereof "a violation,
21 except that the maximum fine shall be \$5,000,".

22 (x) Section 510 of the Act of August 2, 1946 (33 U.S.C. 533), is
23 amended by deleting "punished by a fine of not to exceed \$5,000 or
24 by imprisonment for not more than one year, or by both such fine
25 and imprisonment." and inserting in lieu thereof "guilty of a regula-
26 tory offense under section 2-8F6 of title 18, United States Code, except
27 that the maximum fine shall be \$5,000. Any such subpoena so issued
28 shall be subject to section 2-6C2 of such title.".

29 (y) Section 2 of the Act of February 21, 1891 (33 U.S.C. 554), is
30 amended by deleting "liable to a fine of one hundred dollars, or im-
31 prisonment not exceeding two months," and inserting in lieu thereof
32 "guilty of a misdemeanor, except that the maximum fine shall be one
33 hundred dollars and the maximum prison term shall be two months,".

34 (z) Section 11 of the Rivers and Harbors Appropriation Act of
35 1922 (33 U.S.C. 555), is amended (1) by deleting "or persons"; and
36 (2) by deleting "liable to a fine of \$100, or imprisonment not exceeding
37 two months," and inserting in lieu thereof "guilty of a misdemeanor,
38 except that the maximum fine shall be \$100 and the maximum prison
39 term shall be two months,".

1 (aa) Section 1 of the Rivers and Harbors Appropriation Act of
2 1888 (33 U.S.C. 601), is amended (1) by deleting "and willfully";
3 and (2) by deleting "liable to a fine not exceeding five hundred dol-
4 lars, or imprisonment, not exceeding six months," and inserting in lieu
5 thereof "guilty of a regulatory offense under section 2-8F6 of title 18,
6 United States Code, except that the maximum fine shall be five
7 hundred dollars,".

8 (bb) Section 22 of the Act of March 1, 1893 (33 U.S.C. 682), is
9 amended (1) by deleting the first sentence thereof; (2) by deleting
10 that portion of the second sentence thereof which precedes the colon
11 and inserting in lieu thereof the following: "Any person or company
12 who shall mine by the hydraulic process directly or indirectly injur-
13 ing the navigable waters of the United States, in violation of the pro-
14 visions of this Act, shall be guilty of a Class E felony, except that
15 the maximum fine shall be five thousand dollars".

16 (cc) Section 15(a) of the Longshoremen's and Harbor Workers'
17 Compensation Act (33 U.S.C. 915), is amended by deleting "punished
18 by a fine of not more than \$1,000." and inserting in lieu thereof "guilty
19 of a violation, except that the maximum fine shall be \$1,000.".

20 (dd) Section 27(a) of the Longshoremen's and Harbor Workers'
21 Compensation Act (33 U.S.C. 927(a)), is amended by adding at the
22 end thereof the following new sentence: "The provisions of section
23 2-6C2 of title 18, United States Code, shall be applicable to subpoenas
24 issued pursuant to this section.".

25 (ee) (1) Section 28(b) of the Longshoremen's and Harbor Workers'
26 Compensation Act (33 U.S.C. 928(b)), is amended by deleting "mis-
27 demeanor, and upon conviction thereof, shall, for each such offense, be
28 punished by a fine of not more than \$1,000 or by imprisonment not to
29 exceed one year, or by both such fine and imprisonment." and in-
30 serting in lieu thereof "Class E felony.".

31 (2) Section 28(e) of such Act is amended by deleting "punished by
32 a fine of not more than \$1,000 or by imprisonment for not more than
33 one year, or by both such fine and imprisonment" and inserting in lieu
34 thereof "guilty of a Class E felony, except that the maximum fine
35 shall not exceed \$1,000".

36 (ff) Section 31 of the Longshoremen's and Harbor Workers' Com-
37 pensation Act (33 U.S.C. 931), is repealed.

38 (gg) Section 37 of the Longshoremen's and Harbor Workers' Com-
39 pensation Act (33 U.S.C. 937), is amended by deleting "punished by a
40 fine of not more than \$1,000, or by imprisonment for not more than

1 one year, or by both such fine and imprisonment.” and inserting in lieu
2 thereof “guilty of a Class E felony.”.

3 (hh) Section 38(a) of the Longshoremen’s and Harbor Workers’
4 Compensation Act (33 U.S.C. 938), is amended (1) by deleting “mis-
5 demeanor and, upon conviction thereof, shall be punished by a fine
6 of not more than \$1,000, or by imprisonment for not more than one
7 year, or by both such fine and imprisonment;” and by inserting in lieu
8 thereof “Class E felony:”; and (2) by deleting “shall be also severally
9 liable to such fine or imprisonment as herein provided for the failure
10 of such corporation to secure the payment of compensation; and such
11 president, secretary, and treasurer”.

12 (ii) Section 38(b) of the Longshoremen’s and Harbor Workers’
13 Compensation Act (33 U.S.C. 938(b)), is amended by deleting all
14 that part which follows the word “guilty” and inserting in lieu thereof
15 “of a Class E felony.”.

16 (jj) Section 41(f) of the Longshoremen’s and Harbor Workers’
17 Compensation Act (33 U.S.C. 941), is amended (1) by deleting “will-
18 fully, violates” and inserting “knowingly, violates”; (2) by deleting
19 “willfully interferes” and inserting “knowingly interferes”; (3) by
20 deleting “or who willfully hinders or delays the Secretary or his au-
21 thorized representative in the performance of his duties in the en-
22 forcement of this section,”; and (4) by deleting “offense, and, upon
23 conviction thereof shall be punished for each offense by a fine of not
24 less than \$100 nor more than \$3,000; and in any case where such em-
25 ployer is a corporation, the officer who recklessly permits any such
26 violation to occur shall be guilty of an offense, and, upon convic-
27 tion thereof, shall be punished also for each offense by a fine of not
28 less than \$100 nor more than \$3,000” and inserting in lieu thereof
29 “violation, except that the minimum fine shall be \$100 and the maxi-
30 mum fine shall be \$3,000”.

31 (kk) Subsections (a) and (b) of section 9 of the Act of May 13,
32 1954 (33 U.S.C. 990), is repealed. Subsection (c) of such section 9 is
33 amended by deleting “fined not more than \$5,000 or imprisoned not
34 more than five years, or both.” and inserting in lieu thereof “guilty of
35 a Class D felony, except that the maximum fine shall be \$5,000.”.

36 (ll) Section 6 of the Oil Pollution Act, 1961 (33 U.S.C. 1005), is
37 amended by deleting “misdemeanor, and upon conviction shall be pun-
38 ished by a fine not exceeding \$2,500 nor less than \$500, or by imprison-
39 ment not exceeding one year, or by both such fine and imprisonment,
40 for each offense.” and inserting in lieu thereof “regulatory offense

under section 2-8F6 of title 18, United States Code, except that the minimum fine shall be \$500 and the maximum fine shall be \$2,500.”.

(mm) Section 9(f) of the Oil Pollution Act, 1961 (33 U.S.C. 1008), is amended by deleting all that portion thereof following the first comma and inserting in lieu thereof “he shall be guilty of a violation, except that the minimum fine shall be \$500 and the maximum fine shall be \$1,000. The provisions of section 2-6D3 of title 18, United States Code, shall be applicable with respect to records referred to in this section.”.

(nn) Section 105(5) of the Marine Protection, Research, and Sanctuaries Act of 1972 (86 Stat. 1052), is amended by deleting “fined not more than \$50,000, or imprisoned for not more than one year, or both.” and inserting in lieu thereof the following: “guilty of a Class E felony, except that the maximum fine shall be \$50,000.”

(oo) (1) Section 308(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151), is amended by deleting “section 1905 of title 18 of the United States Code” and inserting in lieu thereof “section 2-6F1 of title 18 of the United States Code”.

(2) Section 309(c) (1) of such Act is amended (1) by deleting “willfully” and inserting “knowingly”; and (2) by deleting “punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both.” and inserting in lieu thereof “guilty of a Class E felony, except that the minimum fine shall be \$2,500 and the maximum fine shall not be more than \$25,000 per day of violation.”.

(3) Section 309(c) (2) of such Act is amended by deleting “punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.” and inserting in lieu thereof “guilty of a misdemeanor, except that the maximum fine shall be \$10,000.”.

(4) Section 312(g) (3) of such Act is amended by deleting “section 1905 of title 18” and inserting in lieu thereof “section 2-6F1 of title 18”.

(5) Section 509(a) (1) of such Act is amended by deleting “section 1905 of title 18” and inserting in lieu thereof “section 2-6F1 of title 18”.

PART BB—TITLE 35, U.S.C., AMENDMENTS

SEC. 351. (a) Section 25(b) of title 35, United States Code, is amended by striking out “1001” and inserting in lieu thereof “2-6D2”.

(b) Section 33 of title 35, United States Code, is amended by striking “shall be fined not more than \$1,000 for each offense” and inserting in lieu thereof “shall be guilty of a Class E felony”.

(c) Section 186 of title 35, United States Code, is amended to read as follows: "Whoever knowingly in violation of the provisions of section 184 of this title shall file or cause to authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model with respect to any invention made in the United States, shall be guilty of a Class E felony, except that the maximum fine shall not exceed \$10,000."

(d) Section 292(a) of title 35, United States Code, is amended by striking "shall be fined not more than \$500 for each such offense" and inserting in lieu thereof "shall be guilty of a misdemeanor for each such offense".

PART CC—TITLE 36, U.S.C., AMENDMENTS

SEC. 352. (a) Section 3 of the Act of October 17, 1942 (56 Stat. 796), is amended by striking the last sentence and inserting in lieu thereof the following: "Any person or firm who manufactures any such service flag or service lapel button without first having obtained 'such a license or otherwise violates this Act, shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."

(b) (1) Section 9 of the Act of September 21, 1951 (64 Stat. 901), is amended by striking "provided however" and inserting in lieu thereof the following: "except that, it shall be an affirmative defense".

(2) Such section is further amended by striking the last sentence and inserting in lieu thereof the following: "If any person violates the provisions of this section he shall be guilty of a misdemeanor, except that the maximum fine shall not exceed \$500."

(c) Section 8 of the Act of August 1956 (70 Stat. 1051), is amended by striking the third sentence and inserting in lieu thereof the following: "Any person violating any regulation promulgated by the District of Columbia Council under the authority of this Act shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."

PART DD—TITLE 38, U.S.C., AMENDMENTS

SEC. 353. Title 38, United States Code, is amended as follows:

(1) Strike out section 787, and strike out the reference to such section in the analysis of chapter 19 of such title.

(2) At the end of section 3313, add the following new sentence: "In addition, any such subpoena shall be subject to section 2-6C2 of title 18, United States Code."

(3) In section 3405 (2)—

1 (A) strike out “wrongfully” and insert in lieu thereof
2 “knowingly”; and

3 (B) strike out all after “shall be” and insert in lieu thereof
4 “guilty of a misdemeanor, except that the maximum fine shall
5 be \$500.”.

6 (4) In section 3501 (a) strike out all after “shall be” and in-
7 sert in lieu thereof “guilty of a Class E felony, except that the
8 maximum fine shall be \$2,000.”.

9 (5) Strike out section 3502, and strike out the reference to such
10 section in the analysis of chapter 61 of such title.

11 (6) In section 3505, strike out subsection (b) and insert in lieu
12 thereof the following:

13 “(b) The offenses referred to in subsection (a) of this section are
14 those offenses for which punishment is prescribed in—

15 “(1) sections 2-5B1, 2-5B2, 2-5B3, 2-9D1, 2-5B4, 2-5B6,
16 2-6D2(a) (6), 2-5B8, 2-5B10, 2-6B1, 2-B3, 2-8B6, 2-8C5, of title
17 18, United States Code;

18 “(2) articles 94, 104, and 106 of the Uniform Code of Military
19 Justice;

20 “(3) sections 222 and 223 of the Atomic Energy Act of 1954;
21 and

22 “(4) section 4 of the Internal Security Act of 1950.”.

23 (7) At the end of chapter 61, add the following new section:

24 **“§ 3506. Discharge papers withheld by claim agent**

25 “Whoever, being a claim agent, attorney, or other person engaged
26 in the collection of claims for pay, allowance, or other benefits for any
27 member of the active military, naval, or air service, or any veteran, or
28 for his dependents or beneficiaries, retains, without the consent of the
29 owner or owners thereof, or refuses to deliver or account for the same
30 upon demand duly made by the owner or owners thereof, or by their
31 agent or attorney, the discharge papers of any such member or vet-
32 eran, which may have been placed in his hands for the purpose of col-
33 lecting said claims, shall be guilty of a misdemeanor, except that the
34 maximum fine shall be \$500. Any person who violates this section
35 shall be disqualified under section 1-4A3 of title 18, United States
36 Code, from prosecuting any such claim in any department or agency
37 of the United States.”.

38 (8) At the end of the analysis of chapter 61, insert the
39 following:

40 “3506. Discharge papers withheld by claim agent.”.

PART EE—TITLE 39, U.S.C., AMENDMENTS

SEC. 354. (a) Except as otherwise expressly provided, wherever in this section an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of title 39, United States Code.

(b) (1) Section 410 (b) (2) is amended by striking out “the Postal Service.”

(2) Section 602 (c) is amended by striking “section 1699 of title 18” and inserting “section 6009 of this title”.

(3) The text of section 1008 is amended to read as follows:

“A person temporarily employed to deliver mail is deemed an employee of the Postal Service and is subject to the provisions of chapter 60 of this title to the same extent as other employees of the Postal Service.”

(4) Section 2201 is amended by striking “chapter 307” and inserting “chapter 73”.

(5) Section 3001 is amended by striking “section 1302, 1341, 1342, 1461, 1463, 1714, 1715, 1716, 1717, or 1718” and inserting “section 1-2A4, 1-2A3, 2-7B1, 2-7B2, 2-7B3, 2-7B4, 2-7C1, 2-7C2, 2-8B1, 2-8B2, 2-8B3, 2-8B5, 2-8B6, 2-8D3, 2-8E1, 2-8E2, 2-9F1, 2-9F2, or 2-9F5”.

(6) Section 3001 (f) is amended by striking “chapter 71 and 83” and inserting “section 1-2A4, 1-2A3, 2-6B1, 2-6D2, 2-6F4, 2-7G3, 2-7B1, 2-7B2, 2-7B3, 2-7B4, 2-7C1, 2-7C2, 2-8B1, 2-8B2, 2-8B3, 2-8B5, 2-8B6, 2-8D3, 2-8D6, 2-8E1, 2-8E2, or 2-9F5”.

(7) Section 3003 (a) is amended by striking “sections 1302, 1341, and 1342” and inserting “1-2A4, 2-8D3, 2-8E1, 2-8E2, 2-9F1, and 2-9F2”.

(8) Section 3011 (e) is amended by striking “section 1461 or 1463” and inserting “section 2-9F5”.

(9) Subsections (a) and (b) of section 5206 are each amended by striking out “fine” and inserting “impose a civil penalty on”.

(10) Section 5206(c) is amended by striking out “fine” and inserting “civil penalty”.

(11) Section 5403 is amended by striking out “fines” and inserting “civil penalties”.

(12) Section 5603 is amended by striking out “fined not more than \$500 for each day of refusal” and inserting “guilty of a violation”.

(13) Section 5604 is amended by striking “fines” and inserting “civil penalties”.

1 (14) (A) Title 39 is amended by adding at the end thereof the fol-
 2 lowing new part :

3 "PART VI—CRIMES

4 "Chapter 60.—Crimes----- Sec. 6001

5 "Chapter 60.—CRIMES

"Sec.

"6001. Mail contracts.

"6002. Foreign mail as United States mail.

"6003. Carriage of mail generally.

"6004. Carriage of matter out of mail over post routes.

"6005. Carriage of matter out of mail on vessels.

"6006. Private express for letters and packets.

"6007. Transportation of persons acting as private express.

"6008. Prompt delivery of mail from vessels.

"6009. Certification of delivery from vessel.

"6010. Desertion of mails.

"6011. Delay or destruction of mail or newspapers.

"6012. Keys or locks stolen or reproduced.

"6013. Falsification of postal returns to increase compensation.

"6014. Issuance of money orders without payment.

"6015. Firearms as nonmailable ; regulations.

"6016. Injurious articles as nonmailable.

"6017. Nonmailable motor vehicle master keys.

"6018. Letters and writings as nonmailable.

"6019. Libelous matter on wrappers or envelopes.

"6020. Sale or pledge of stamps.

"6021. False evidence to secure second-class rate.

"6022. Avoidance of postage by using lower class matter.

"6023. Postage unpaid on deposited mail matter.

"6024. Postage collected unlawfully.

"6025. Weight of mail increased fraudulently.

"6026. Post office conducted without authority.

"6027. Uniforms of carriers.

"6028. Vehicles falsely labeled as carriers.

"6029. Approval of bond or sureties by postmaster.

"6030. Mailing periodical publications without prepayment of postage.

"6031. Editorials and other matter as advertisements.

"6032. Sexually oriented advertisements.

"6033. Restrictive use of information.

"6034. Manufacturer of sexually related mail matter.

6 "§ 6001. Mail contracts

7 "Whoever, being a person employed in the Postal Service, becomes
 8 interested in any contract for carrying the mail or acting as agent with
 9 or without compensation for any contractor or person offering to
 10 become a contractor in any business before the Postal Service, shall be
 11 guilty of a misdemeanor.

12 "§ 6002. Foreign mail as United States mail

13 "Every foreign mail, while being transported across the territory
 14 of the United States under authority of law, is mail of the United
 15 States, and any depredation thereon or offense in respect thereto shall
 16 be punishable as though it were United States Mail.

17 "§ 6003. Carriage of mail generally

1 “Whoever, being concerned in carrying the mail, collects, receives,
2 or carries any letter or packet, contrary to law, shall be guilty of a
3 violation.

4 **“§ 6004. Carriage of matter out of mail over post routes**

5 “Whoever, having charge or control of any conveyance operating
6 by air, land, or water, which regularly performs trips at stated periods
7 on any post route, or from one place to another between which mail
8 is regularly carried, carries, otherwise than in the mail, any letter
9 or packet, except such as relates to some part of the cargo of such
10 conveyance, or to the current business of the carrier, or to some article
11 carried at the same time by the same conveyance, shall except as other-
12 wise provided by law, be guilty of a violation.

13 **“§ 6005. Carriage of matter out of mail on vessels**

14 “Whoever carries any letter or packet on board any vessel which
15 carries the mail, otherwise than in such mail, shall, except as otherwise
16 provided by law, be guilty of a violation.

17 **“§ 6006. Private express for letters and packets**

18 “(a) Whoever establishes any private express for the conveyance of
19 letters or packets, or in any manner causes or provides for the convey-
20 ance of the same by regular trips or at stated periods over any post
21 route which is or may be established by law, or from any city, town,
22 or place, to another city, town, or place, between which the mail is
23 regularly carried, shall be guilty of a misdemeanor.

24 “(b) Whoever transmits by private express or other unlawful means
25 or delivers to any agent thereof, or deposits at any appointed place
26 for the purpose of being so transmitted, any letter or packet, shall be
27 guilty of a violation.

28 “(c) This section shall not prohibit any person from receiving and
29 delivering to the nearest post office, post car, or other authorized deposi-
30 tory for mail matter, any mail matter properly stamped.

31 “(d) This chapter shall not prohibit the conveyance or transmission
32 of letters or packets by private hands without compensation or by
33 special messenger employed for the particular occasion only. When-
34 ever more than 25 such letters or packets are conveyed or transmitted
35 by such special messenger, the requirements of section 601 of this title
36 shall be observed as to each piece.

37 **“§ 6007. Transportation of persons acting as private express**

38 “Whoever having charge or control of any conveyance operating
39 by air, land, or water, knowingly conveys or knowingly permits the

1 conveyance of any person acting or employed as a private express for
2 the conveyance of letters or packets, and actually in possession of the
3 same for the purpose of conveying them contrary to law, shall be
4 guilty of a violation.

5 **“§ 6008. Prompt delivery of mail from vessel**

6 “Whoever, having charge or control of any vessel passing between
7 ports or places in the United States, and arriving at any such port or
8 place where there is a post office, fails to deliver to the postmaster or at
9 the post office, within three hours after his arrival, if it is in the day-
10 time, and if at night, within two hours after the next sunrise, all letters
11 and packages brought by him or within his power or control and not
12 relating to the cargo, addressed to or destined for such port or place,
13 shall be guilty of a violation.

14 “For each letter or package so delivered he shall receive two cents
15 unless the same is carried under contract.

16 **“§ 6009. Certification of delivery from vessel**

17 “(a) No vessel arriving within a port or collection district of the
18 United States shall be allowed to make entry or break bulk until all
19 letters on board are delivered to the nearest post office, except where
20 waybilled for discharge at other ports in the United States at which
21 the vessel is scheduled to call and the Postal Service does not determine
22 that unreasonable delay in the mails will occur, and the master or other
23 person having charge or control thereof has signed and sworn to the
24 following declaration before the collector or other proper customs
25 officer:

26 I, A. B., master——, of the——, arriving from——, and now
27 lying in the port of——, do solemnly swear (or affirm) that I have
28 to the best of my knowledge and belief delivered to the post office at
29 —— every letter and every bag, packet, or parcel of letters on board
30 the said vessel during her last voyage, or in my possession or under my
31 power or control, except where waybilled for discharge at other ports
32 in the United States at which the said vessel is scheduled to call and
33 which the Postal Service has not determined will be unreasonably
34 delayed by remaining on board the said vessel for delivery at such
35 ports.

36 “(b) Whoever, being the master or other person having charge or
37 control of such vessel, breaks bulk before he has arranged for such
38 delivery or onward carriage, shall be guilty of a violation.

39 **“§ 6010. Desertion of mails**

1 “Whoever, having taken charge of any mail, voluntarily quits or
2 deserts the same before he has delivered it into the post office at the
3 termination of the route, or to some known mail carrier, messenger,
4 agent, or other employee in the Postal Service authorized to receive
5 the same, shall be guilty of a misdemeanor, except that the maximum
6 fine shall be \$500.

7 **“§ 6011. Delay or destruction of mail or newspapers**

8 “(a) Whoever, being a Postal Service officer or employee, unlawfully
9 secretes, destroys, detains, delays, or opens any letter, postal card,
10 package, bag, or mail entrusted to him or which shall come into his
11 possession, and which was intended to be conveyed by mail, or carried
12 or delivered by any carrier or other employee of the Postal Service,
13 or forwarded through or delivered from any post office or station there-
14 of established by authority of the Postmaster General or the Postal
15 Service, shall be guilty of a misdemeanor.

16 “(b) Whoever, being a Postal Service officer or employee, improper-
17 ly detains, delays, or destroys any newspaper, or permits any other per-
18 son to detain, delay, or destroy, the same, or opens, or permits any
19 other person to open, any mail or package of newspapers not directed
20 to the office where he is employed ; or

21 “Whoever, without authority, opens, or destroys any mail or package
22 of newspapers not directed to him, shall be guilty of a misdemeanor,
23 except that the maximum fine shall be \$100.

24 **“§ 6012. Keys or locks stolen or reproduced**

25 “Whoever steals, purloins, embezzles, or obtains by false pretense any
26 key suited to any lock adopted by the Postal Service and in use on any
27 of the mails or bags thereof, or any key to any lock box, lock drawer, or
28 other authorized receptacle for the deposit or delivery of mail matter ;
29 or

30 “Whoever knowingly and unlawfully makes, forges, or counterfeits
31 any such key, or possesses any such mail lock or key with the intent
32 unlawfully or improperly to use, sell, or otherwise dispose of the same,
33 or to cause the same to be unlawfully or improperly used, sold, or
34 otherwise disposed of ; or

35 “Whoever, being engaged as a contractor or otherwise in the manu-
36 facture of any such mail lock or key, delivers any finished or unfinished
37 lock or the interior part thereof, or key, used or designed for use by
38 the department, to any person not duly authorized under the hand of
39 the Postmaster General and the seal of the Postal Service, to receive the

1 same, unless the person receiving it is the contractor for furnishing
2 the same or engaged in the manufacture thereof in the manner author-
3 ized by the contract, or the agent of such manufacturer, shall be guilty
4 of a misdemeanor.

5 **“§ 6013. Falsification of postal returns to increase compensation**

6 “Whoever, being a Postal Service officer or employee in any post office
7 or station thereof, for the purpose of increasing the emoluments or com-
8 pensation of his office, induces any person to deposit mail matter in,
9 or forward in any manner for mailing at, the office where such officer
10 or employee is employed, knowing such matter to be properly mailable
11 at another post office, shall be guilty of a misdemeanor, except that the
12 maximum fine shall be \$500.

13 **“§ 6014. Issuance of money orders without payment**

14 “Whoever, being an officer or employee of the Postal Service, issues a
15 money order without having previously received the money therefor,
16 shall be guilty of a violation.

17 **“§ 6015. Firearms as nonmailable; regulations**

18 “(a) Pistols, revolvers, and other firearms capable of being concealed
19 on the person are nonmailable and shall not be deposited in or carried
20 by the mails or delivered by any officer or employee of the Postal
21 Service. Such articles may be conveyed in the mails, under such regu-
22 lations as the Postal Service shall prescribe, for use in connection with
23 their official duty, to officers of the Army, Navy, Air Force, Coast
24 Guard, Marine Corps, or Organized Reserve Corps; to officers of the
25 National Guard or Militia of a State, Territory, or District; to officers
26 of the United States or of a State, Territory, or District whose official
27 duty is to serve warrants of arrest or commitments; to employees of
28 the Postal Service; to officers and employees of enforcement agencies
29 of the United States; and to watchmen engaged in guarding the prop-
30 erty of the United States, a State, Territory, or District. Such articles
31 also may be conveyed in the mails to manufacturers of firearms or
32 bona fide dealers therein in customary trade shipments, including such
33 articles for repairs or replacement of parts, from one to the other, under
34 such regulations as the Postal Service shall prescribe.

35 “(b) Whoever knowingly deposits for mailing or delivery, or know-
36 ingly causes to be delivered by mail according to the direction thereon,
37 or at any place to which it is directed to be delivered by the person to
38 whom it is addressed, any pistol, revolver, or firearm declared non-
39 mailable by this section, shall be guilty of a Class E felony.

1 **“§ 6016. Injurious articles as nonmailable**

2 “(a) All kinds of poison, and all articles and compositions containing
3 poison, and all poisonous animals, insects, reptiles, and all explosives,
4 inflammable materials, infernal machines, and mechanical, chemical,
5 or other devices or compositions which may ignite or explode, and all
6 disease germs or scabs, and all other natural or artificial articles, com-
7 positions, or material which may kill or injure another, or injure the
8 mails or other property, whether or not sealed as first-class matter,
9 are nonmailable matter and shall not be conveyed in the mails or deliv-
10 ered from any post office or station thereof, nor by any officer or em-
11 ployee of the Postal Service.

12 “(b) The Postal Service may permit the transmissions in the mails,
13 under such rules and regulations as it shall prescribe as to preparation
14 and packing, of any such articles which are not outwardly or of their
15 own force dangerous or injurious to life, health, or property.

16 “(c) The Postal Service is authorized and directed to permit the
17 transmission in the mails, under regulations to be prescribed by it, of
18 live scorpions which are to be used for purposes of medical research
19 or for the manufacture of antivenom. Such regulations shall include
20 such provisions with respect to the packaging of such live scorpions
21 for transmission in the mails as the Postal Service deems necessary or
22 desirable for the protection of Postal Service personnel and of the
23 public generally and for ease of handling by such personnel and by
24 any individual connected with such research or manufacture. Nothing
25 contained in this subsection shall be construed to authorize the trans-
26 mission in the mails of live scorpions by means of aircraft engaged
27 in the carriage of passengers for compensation or hire.

28 “(d) The transmission in the mails of poisonous drugs and medicines
29 may be limited by the Postal Service to shipments of such articles
30 from the manufacturer thereof or dealer therein to licensed physicians,
31 surgeons, dentists, pharmacists, druggists, cosmetologists, barbers, and
32 veterinarians under such rules and regulations as it shall prescribe.

33 “(e) The transmission in the mails of poisons for scientific use,
34 and which are not outwardly dangerous or of their own force dangerous
35 or injurious to life, health, or property, may be limited by the Postal
36 Service to shipments of such articles between the manufacturers
37 thereof, dealers therein, bona fide research or experimental scientific
38 laboratories, and such other persons who are employees of the Federal,
39 a State, or local government, whose official duties are comprised, in
40 whole or in part, of the use of such poisons, and who are designated

1 by the head of the agency in which they are employed to receive or send
2 such articles, under rules and regulations as the Postal Service shall
3 prescribe.

4 “(f) All spirituous, vinous, malted, fermented, or other intoxicating
5 liquors of any kind are nonmailable and shall not be deposited in or
6 carried through the mails.

7 “(g) All knives having a blade which opens automatically (1) by
8 hand pressure applied to a button or other device in the handle of the
9 knife, or (2) by operation of inertia, gravity, or both, are nonmailable
10 and shall not be deposited in or carried by the mails or delivered by any
11 officer or employee of the Postal Service. Such knives may be conveyed
12 in the mails, under such regulations as the Postal Service shall
13 prescribe—

14 “(1) to civilian or Armed Forces supply or procurement officers
15 and employees of the Federal Government ordering, procuring,
16 or purchasing such knives in connection with the activities of the
17 Federal Government;

18 “(2) to supply or procurement officers of the National Guard,
19 the Air National Guard, or militia of a State, Territory, or the
20 District of Columbia ordering, procuring, or purchasing such
21 knives in connection with the activities of such organizations;

22 “(3) to supply or procurement officers or employees of the mu-
23 nicipal government of the District of Columbia or of the govern-
24 ment of any State or Territory, or any county, city, or other
25 political subdivision of a State or Territory, ordering, procuring,
26 or purchasing such knives in connection with the activities of
27 such government; and

28 “(4) to manufacturers of such knives or bona fide dealers therein
29 in connection with any shipment made pursuant to an order from
30 any person designated in paragraphs (1), (2), and (3).

31 The Postal Service may require, as a condition of conveying any such
32 knife in the mails, that any person proposing to mail such knife explain
33 in writing to the satisfaction of the Postal Service that the mailing of
34 such knife will not be in violation of this section.

35 “(h) Whoever knowingly deposits for mailing or delivery, or know-
36 ingly causes to be delivered by mail, according to the direction thereon,
37 or at any place at which it is directed to be delivered by the person to
38 whom it is addressed, anything declared nonmailable by this section,
39 unless in accordance with the rules and regulations authorized to be
40 prescribed by the Postal Service, shall be guilty of a Class E felony.

“§ 6017. Nonmailable motor vehicle master keys

“Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, any matter declared to be nonmailable by section 3002 of this title shall be guilty of a Class E felony.

“§ 6018. Letters and writings as nonmailable

“(a) Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter, or thing, in violation of section 1-2A6, 1-2A4, 1-2A5, 2-5B6, 2-5B7, 2-5C1, 2-5C3, 2-5C4, 2-5D1, 2-5D3, 2-6B3, 2-6D2, 2-6F4, 2-8E1, 2-8E2, 2-8E3, or 2-8E6 of title 18, United States Code, or which contains any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States is nonmailable and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

“(b) Whoever uses the mails or Postal Service for the transmission of any matter declared by this section to be nonmailable shall be guilty of a class E felony, except that the maximum fine shall be \$5,000.

“§ 6019. Libelous matter on wrappers or envelopes

“(a) All matters otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which is written or printed or otherwise impressed or apparent any delineation, epithet, term, or language of libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, is nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

“(b) Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be guilty of a misdemeanor.

“§ 6020. Sale or pledge of stamps

“Whoever, being a Postal Service officer or employee, knowingly:

(a) uses or disposes of postage stamps, stamped envelopes, or postal cards entrusted to his care or custody in the payment of debts, or in the purchase of merchandise or other salable articles, or pledges

1 or hypothecates the same or sells or disposes of them except for cash;
2 (b) sells or disposes of postage stamps or postal cards for any larger
3 or less sum than the values indicated on their faces; (c) sells or disposes
4 of stamped envelopes for a larger or less sum than is charged therefor
5 by the Postal Service for like quantities; (d) sells or disposes of postage
6 stamps, stamped envelopes, or postal cards at any point or place out-
7 side of the delivery of the office where such officer or employee is
8 employed; (e) for the purpose of increasing the emoluments or com-
9 pensation of any such officer or employee, inflates or induces the infla-
10 tion of the receipts of any post office or any station or branch thereof;
11 (f) sells or disposes of postage stamps, stamped envelopes, or postal
12 cards, otherwise than as provided by law or the regulations of the
13 Postal Service;

14 shall be guilty of a misdemeanor, except that the maximum fine shall
15 be \$500.

16 **“§ 6021. False evidence to secure second-class rate**

17 “Whoever knowingly submits to the Postal Service, or to any officer
18 or employee of the Postal Service, any false evidence relative to any
19 publication for the purpose of securing the admission thereof at the
20 second-class rate, for transportation in the mails, shall be guilty of a
21 violation.

22 **“§ 6022. Avoidance of postage by using lower class matter**

23 “(a) Matter of the second, third, or fourth class containing any
24 writing or printing in addition to the original matter, other than as
25 authorized by law, shall not be admitted to the mails, nor delivered,
26 except upon payment of postage for matter of the first class, deducting
27 therefrom any amount which may have been prepaid by stamps affixed,
28 unless by direction of a duly authorized officer of the Postal Service
29 such postage shall be remitted.

30 “(b) Whoever knowingly conceals or incloses any matter of a higher
31 class in that of a lower class, and deposits the same for conveyance by
32 mail, at a less rate than would be charged for such higher class matter,
33 shall be guilty of a violation.

34 **“§ 6023. Postage unpaid on deposited mail matter**

35 “Whoever knowingly deposits any mailable matter such as state-
36 ments of accounts, circulars, sale bills, or other like matter, on which
37 no postage has been paid, in any letter box established, approved, or
38 accepted by the Postal Service for the receipt or delivery of mail
39 matter on any mail route with intent to avoid payment of lawful
40 postage thereon, shall be guilty of a violation.

“§ 6024. Postage collected unlawfully

“Whoever, being a postmaster or other person authorized to receive the postage of mail matter, fraudulently demands or receives any rate of postage or gratuity or reward other than is provided by law for the postage of such mail matter, shall be guilty of a regulatory offense under section 2–8F6 of title 18, United States Code.

“§ 6025. Weight of mail increased fraudulently

“Whoever places any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mail, with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail may pass, shall be guilty of a regulatory offense under section 2–8F6 of title 18, United States Code.

“§ 6026. Post office conducted without authority

“Whoever, without authority from the Postal Service, sets up or professes to keep any office or place of business bearing the sign, name, or title of post office, shall be guilty of a violation.

“§ 6027. Uniforms of carriers

“(a) Whoever, not being connected with the letter-carrier branch of the Postal Service, wears the uniform or badge which may be prescribed by the Postal Service to be worn by letter carriers, shall be guilty of a misdemeanor, except that the maximum fine shall be \$100.

“(b) It shall be a defense to any prosecution brought for violation of subsection (a) that the defendant was an actor or actress in a theatrical, television, or motion-picture production who was wearing the uniform or badge of the letter-carrier branch of the Postal Service while portraying a member of that service, and that the portrayal did not tend to discredit that service.

“§ 6028. Vehicles falsely labeled as carriers

“(a) It shall be unlawful to paint, print, or in any manner to place upon or attach to any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, not actually used in carrying the mail, the words “United States Mail”, or any words, letters, or characters of like import; or to give notice, by publishing in any newspaper or otherwise, that any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, is used in carrying the mail, when the same is not actually so used.

“(b) Whoever violates, and every owner, receiver, lessee, or managing operator who suffers or permits the violation of, any provision of subsection (a) shall be guilty of a misdemeanor.

1 **“§ 6029. Approval of bond or sureties by postmaster**

2 “Whoever, being a postmaster, affixes his signature to the approval
3 of any bond of a bidder, or to the certificate of sufficiency of sureties
4 in any contract, before the said bond or contract is signed by the bidder
5 or contractor and his sureties, or knowingly, or without the exercise
6 of due diligence, approves any bond of a bidder with insufficient sure-
7 ties, or knowingly makes any false or fraudulent certificate, shall be
8 guilty of a Class E felony, except that the maximum fine shall be
9 \$5,000; and shall be dismissed from office and disqualified from holding
10 the office of postmaster.

11 **“§ 6030. Mailing periodical publications without prepayment of**
12 **postage**

13 “Whoever, except as permitted by law, knowingly mails any periodi-
14 cal publication without the prepayment of postage, or, being an officer
15 or employee of the Postal Service, knowingly permits any periodical
16 publication to be mailed without prepayment of postage, shall be
17 guilty of a misdemeanor.

18 **“§ 6031. Editorials and other matter as ‘advertisements’**

19 “Whoever, being an editor or publisher, prints in a publication en-
20 tered as second class mail, editorial or other reading matter for which
21 he has been paid or promised a valuable consideration, without plainly
22 marking the same ‘advertisement’ shall be guilty of a violation.

23 **“§ 6032. Sexually oriented advertisements**

24 “(a) Whoever—

25 “(1) knowingly uses the mails for the mailing, carriage in the
26 mails, or delivery of any sexually oriented advertisement in vio-
27 lation of section 3010 of this title, or knowingly violates any
28 regulations of the Board of Governors issued under such section;
29 or

30 “(2) sells, leases, rents, lends, exchanges, or licenses the use of,
31 or, except for the purpose expressly authorized by section 3010
32 of this title, uses a mailing list maintained by the Board of Gover-
33 nors under such section, shall be guilty of a Class E felony, except
34 that the maximum fine shall be \$5,000 for a first offense, and
35 \$10,000 for a second or subsequent offense.

36 “(b) For purposes of this section, the term ‘sexually oriented ad-
37 vertisement’ has the meaning given it in section 3010 (d) of this title.

38 **“§ 6033. Restrictive use of information**

39 “(a) No information or evidence obtained by reason of compliance
40 by a natural person with any provision of section 3010 of this title,

or regulations issued thereunder, shall, except as provided in subsection (c) of this section, be used, directly or indirectly, as evidence against that person in a criminal proceeding.

“(b) The fact of the performance of any act by an individual in compliance with any provisions of section 3010 of this title, or regulations issued thereunder, shall not be deemed the admission of any fact, or otherwise be used, directly or indirectly, as evidence against that person in a criminal proceeding, except as provided in subsection (c) of this section.

“(c) Subsections (a) and (b) of this section shall not preclude the use of any such information or evidence in a prosecution or other action under any applicable provision of law with respect to the furnishing of false information.

“§ 6034. Manufacturer of sexually related mail matter

“(a) Whoever shall print, reproduce, or manufacture any sexually related mail matter, intending or knowing that such matter will be deposited for mailing or delivery by mail in violation of section 3008 or 3010 of this title, or in violation of any regulation of the Postal Service issued under such section, shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000 for a first offense, and \$10,000 for a second or subsequent offense.

“(b) As used in this section, the term ‘sexually related mail matter’ means any matter which is within the scope of section 3008 (a) or 3010(d) of this title.”

(B) The table of contents is amended by adding at the end thereof the following:

“PART VI—CRIMES

“Chapter. 60.—Crimes----- Sec. 6001

“Chapter 60.—CRIMES

“Sec.

“6001. Mail contracts.

“6002. Foreign mail as United States mail.

“6003. Carriage of mail generally.

“6004. Carriage of matter out of mail over post routes.

“6005. Carriage of matter out of mail on vessels.

“6006. Private express for letters and packets.

“6007. Transportation of persons acting as private express.

“6008. Prompt delivery of mail from vessels.

“6009. Certification of delivery from vessel.

“6010. Desertion of mails.

“6011. Delay or destruction of mail or newspapers.

“6012. Keys or locks stolen or reproduced.

“6013. Falsification of postal returns to increase compensation.

“6014. Issuance of money orders without payment.

“6015. Firearms as nonmailable; regulations.

“6016. Injurious articles as nonmailable.

- "6017. Nonmailable motor vehicle master keys.
- "6018. Letters and writings as nonmailable.
- "6019. Libelous matter on wrappers on envelopes.
- "6020. Sale or pledge of stamps.
- "6021. False evidence to secure second-class rate.
- "6022. Avoidance of postage by using lower class matter.
- "6023. Postage unpaid on deposited mail matter.
- "6024. Postage collected unlawfully.
- "6025. Weight of mail increased fraudently.
- "6026. Post office conducted without authority.
- "6027. Uniforms of carriers.
- "6028. Vehicles falsely labeled as carriers.
- "6029. Approval of bond or sureties by postmaster.
- "6030. Mailing periodical publications without prepayment of postage.
- "6031. Editorials and other matter as 'advertisements'.
- "6032. Sexually oriented advertisements.
- "6033. Restrictive use of information.
- "6034. Manufacturer of sexually related mail matter."

1 (15) (A) Chapter 56 is amended by adding at the end thereof the
2 following:

3 **"§ 5606. Postage on mail delivered by foreign vessels**

4 "Except as otherwise provided by treaty or convention the Postal
5 Service may require the transportation by any steamship of mail
6 between the United States and any foreign port at the compensation
7 fixed under authority of law. Upon refusal by the master or the com-
8 mander of such steamship or vessel to accept the mail, when tendered
9 by the Postal Service or its representative, the collector or other officer
10 of the port empowered to grant clearance, on notice of the refusal
11 aforesaid, shall withhold clearance, until the collector or other officer
12 of the port is informed by the Postal Service or its representative
13 that the master or commander of the steamship or vessel has accepted
14 the mail or that conveyance by his steamship or vessel is no longer
15 required by the Postal Service."

16 (B) The chapter analysis of chapter 56 is amended by adding at
17 the end thereof the following new item:

"5606. Postage on mail delivered by foreign vessels."

18 (C) The table of contents is amended by adding after the item
19 relating to section 5605 the following new item:

"5606. Postage on mail delivered by foreign vessels."

20 **PART FF—TITLE 40, U.S.C., AMENDMENTS**

21 **SEC. 355.** (a) Section 8 of the Act of August 18, 1949 (40 U.S.C.
22 13m), is amended—

23 (1) by striking out "shall be fined not more than \$100 or
24 imprisoned not more than sixty days or both" and inserting in
25 lieu thereof "is guilty of a regulatory offense under section 2-8F6
26 of title 18, United States Code"; and

(2) by striking out all after "assistants" and inserting in lieu thereof a period.

(b) Section 1 of the Act of September 1, 1916, as amended (40 U.S.C. 53), is amended by striking out "an offense, upon conviction of which the party or parties offending shall be punished by a fine of not less than \$1 or not more than \$40" and inserting in lieu thereof "a violation, except that the maximum fine shall be \$40".

(c) Section 1803 of the Revised Statutes (40 U.S.C. 56), is amended by striking out all after "United States" and inserting in lieu thereof a period and the following: "Violation of this section is a violation, except that a fine of not less than \$50 nor more than \$500 shall be imposed."

(d) Section 15 of the Act of July 29, 1892, as amended (40 U.S.C. 101), is repealed.

(e) Section 1820 of the Revised Statutes (40 U.S.C. 193) is amended by adding at the end thereof the following new sentence: "Any violation of any such regulation is a regulatory offense under section 2-8F6 of title 18, United States Code."

(f) (1) Section 6 of the Act of July 31, 1946, as amended (40 U.S.C. 193f), is amended—

(A) by inserting "or" after the semicolon at the end of subsection (b) (2); and

(B) by striking out clauses 3, 4, 5, and 6 of such subsection.

(2) The text of section 8 of such Act, as amended (40 U.S.C. 193h), is amended to read as follows:

"(a) A violation of section 6(a) of this Act is a Class E felony, except that the maximum fine shall be \$5,000.

"(b) A violation of section 2, 3, 4, 5, 6(b), or 7 of this Act shall be a misdemeanor, except that the maximum fine shall be \$500."

(g) Section 6 of the Act of October 24, 1951, as amended (40 U.S.C. 193s), is amended to read as follows:

"SEC. 6. A violation of section 2, 3, or 4 of this Act or of any regulation prescribed under section 5 of this Act is a misdemeanor, except that the maximum prison term shall be 60 days and the maximum fine shall be \$100. Prosecution of any person for any such violation shall be had in the Superior Court of the District of Columbia, upon information by the United States Attorney or any of his assistants."

(h) Section 14 of the Act of July 31, 1946, as amended (40 U.S.C. 212b), is amended as follows:

1 (1) In the first sentence of subsection (a), strike out, "such
2 penalties not to exceed a fine of \$300 or imprisonment for not
3 more than 90 days." and insert in lieu thereof a period and the
4 following: "Violation of any such regulation shall be a regula-
5 tory offense under section 2-8F6 of title 18, United States Code."

6 (2) In subsection (b), strike out all after "necessary" and insert
7 in lieu thereof a period.

8 (i) The text of section 4 of the Act of June 1, 1948 (40 U.S.C. 318c),
9 is amended to read as follows: "A violation of any rule or regulation
10 issued under section 2 of this Act shall be a regulatory offense under
11 section 2-8F6 of title 18, United States Code."

12 (j) Section 106 of the Act of August 13, 1962 (40 U.S.C. 332), is
13 amended by striking out "intentionally" and inserting in lieu thereof
14 "knowingly", and by striking out all after "shall be" and inserting in
15 lieu thereof "guilty of a misdemeanor."

16 PART GG—TITLE 41, U.S.C., AMENDMENTS

17 SEC. 356. (a) Section 6 of the Act of June 30, 1936, as amended (49
18 Stat. 2038; 41 U.S.C. 39), is amended by striking out all after the third
19 sentence and inserting in lieu thereof the following: "Failure or refusal
20 to obey any order shall be punishable as a violation of section 2-6C2
21 of title 18, United States Code."

22 (b) Section 4 of the Act of March 8, 1946, as amended (60 Stat. 38;
23 41 U.S.C. 54), is amended by striking out all after "payment" and
24 inserting in lieu thereof "shall be guilty of a Class E felony, except
25 that the maximum fine shall be \$10,000."

26 SEC. 357. (a) This section may be cited as the "Miscellaneous Public
27 Contracts Crimes Act of 1973."

28 (b) Whoever, being an officer or employee of the United States,
29 knowingly contracts for the erection, repair, or furnishing of any
30 public building, or for any public improvement, to pay a larger amount
31 than the specific sum appropriate for such purpose shall be guilty of
32 a Class E felony.

33 (c) (1) No contract for furnishing supplies to the Postal Service
34 shall be made with any person who has entered, or proposed to enter,
35 into any combination to prevent the making of any bid for furnishing
36 such supplies, to fix a price or prices therefor, or who has made any
37 agreement, or given or performed, or promised to give or perform,
38 any consideration whatever to induce any other person not to bid for
39 any such contract, or bid at a specified price or prices thereon.

(2) Any person who violates the provisions of paragraph (1) shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000; and if the offender is a contractor for furnishing such supplies his contract may be annulled.

(d) (1) The Administrator of General Services, by regulation, may authorize the destruction of any records of a war contractor relating to the negotiation, award, performance, payment, interim financing, cancellation or other termination, or settlement of a war contract of \$25,000 or more and of any records of a war contractor or purchaser relating to any disposition of termination inventory in which the consideration received by any war contractor or any government agency is \$5,000 or more upon such terms and conditions as he deems appropriate, including the requirement for the making and retaining of photographs or microphotographs, which shall have the same force and effect as the originals thereof.

(2) The definitions of terms in section 3 of the Act of July 1, 1944, as amended (58 Stat. 650, 41 U.S.C. 103), shall apply to similar terms used in paragraph (1).

PART HH—TITLE 42, U.S.C., AMENDMENTS

SEC. 358. (a) (1) Section 314 of the Public Health Service Act (58 Stat. 693) is amended by striking subsection (f) (7) (A) and inserting in lieu thereof the following:

“(7) (A) Any State officer or employee who is assigned to the Department without appointment shall be subject to the provisions of section 2-6E2 of title 18, United States Code.”

(2) Section 323 of the Public Health Service Act is amended by striking “751, 752” and inserting in lieu thereof “7103”.

(3) Subsection (a) of section 341 of such Act is amended by striking “pursuant to the provisions of the Federal Youth Corrections Act (Chapter 402 of title 18 of the United States Code).”

(4) (A) Subsection (b) of section 343 of such Act is amended by striking “the provisions of the Act of June 21, 1902, as amended U.S.C. 1940 edition, title 18, Secs. 710-712(a), regulation commutation of sentence for good conduct of United States prisoners, section 8 of the Act of May 27, 1930 (U.S.C. 1940 edition, title 18, Sec. 744 (h)), regulation commutation of sentence for employment of industry and the” and inserting in lieu thereof “The”.

(B) Such subsection is further amended by striking “714-723c” and inserting in lieu thereof “3401-03”.

1 (5) (A) Subsection (a) of section 351 of such Act is amended by
2 striking "sell, barter, or exchange or offer for sale, barter, or exchange
3 in the District of Columbia or send, carry, or bring for sale, barter, or
4 exchange from any State or possession into any other State or pos-
5 session or into any foreign country or from any foreign country into
6 any State or possession" and insert in lieu thereof "traffic in".

7 (B) Subsection (b) of such section is amended by inserting "know-
8 ingly" immediately after "shall" the first time it appears.

9 (C) Subsection (e) of such section is repealed.

10 (D) Subsection (f) of such section is amended to read as follows:
11 "Any person who shall violate any of the provisions of this section shall
12 be guilty of a misdemeanor, except that the maximum fine shall be
13 \$500."

14 (c) (1) Paragraph (1) of subsection (b) of section 353 of such Act
15 is amended by inserting the word "knowingly" immediately after
16 "person" the first time it appears.

17 (2) Subsection (h) of such section is amended to read as follows:

18 "(h) Any person who knowingly violates any provision of this
19 section or any rule or regulation promulgated thereunder shall be
20 guilty of a Class E felony."

21 (d) Subsection (e) of section 360A is amended by striking "referred
22 to in section 1905 of title 18 of the United States Code".

23 (e) Subsection (a) of section 368 of such Act is amended by striking
24 "shall be punished by a fine of not more than \$1,000 or be imprisoned
25 for not more than 1 year or both" and inserting in lieu thereof "shall be
26 guilty of a Class E felony".

27 (f) (1) Subsection (e) of section 205 of the Social Security Act (49
28 Stat. 624) is amended by inserting immediately before the period at
29 the end thereof the following: "in accordance with chapter 6 of title
30 18, United States Code".

31 (2) (A) Subsection (a) of section 206 of such Act is amended by
32 striking "shall for each offense be punished by a fine not exceeding
33 \$500 or by imprisonment not exceeding 1 year or both" and inserting in
34 lieu thereof "shall be guilty of a Class E felony, except that the maxi-
35 mum fine shall be \$500".

36 (B) Paragraph (2) of subsection (b) of such section is amended
37 by striking "misdemeanor and upon conviction thereof shall be subject
38 to a fine of not more than \$500 or imprisonment for not more than 1
39 year or both" and inserting in lieu thereof "Class E felony, except
40 that the maximum fine shall be \$500".

(3) Section 208 of such Act is amended to read as follows: "Whoever, having knowledge of the occurrence of any event affecting (1) the initial or continued right to any payment under this title or (2) the initial or continued right to any payment of any other individual on his behalf or has reported for or is receiving such payment, conceals or fails to disclose such event with intent fraudulently to secure payment either in a greater amount that is due or when no payment is authorized shall be guilty of a Class E felony."

(4) (A) Subsection (a) of section 1106 of such Act is amended by striking the last sentence.

(B) Subsection (c) (3) of such section is amended to read as follows:

"(3) The penalties provided in section 2-6F1 of title 18, United States Code, shall apply with respect to use of information provided under paragraph (1) of this subsection, except for the purposes authorized by subparagraph (A) (iv) or (B) thereof."

(5) Section 1107 of such Act is amended to read as follows:

"SEC. 1107. Whoever with the intent to alleviate information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary of Health, Education and Welfare that he is such individual, or the wife, husband, widow, widower, former wife divorced, child or parent of such individual or the duly authorized agent of such individual or of the wife, husband, widow, widower, former wife divorced, child or parent of such individual or (2) falsely represents to any person that he is an employee or agent of the United States shall be guilty of a Class E felony."

(g) Section 203(a) of the Temporary Unemployment Compensation Act of 1958 (72 Stat. 174) is repealed.

(h) Subsection (a) of section 9 of the Temporary Extended Unemployment Compensation Act of 1961 (75 Stat. 12) is repealed.

(i) Section 22 of the United States Housing Act of 1957 (50 Stat. 899, redesignated as section 24 by section 103(a) of the Housing and Urban Development Act of 1965, 79 Stat. 455) is repealed.

(j) Section 203 of the Act of December 2, 1942 (56 Stat. 1034), is repealed.

(k) (1) Section 16 of the National Science Foundation Act of 1950 (64 Stat. 156) is amended by striking in subsection (d) (1) (B) "1001" and inserting in lieu thereof "2-6D2".

(2) Subparagraph (B) of subsection (d) (2) of such section is amended to read as follows:

1 “(B) Whoever violates subparagraph (A) of this paragraph
2 shall be guilty of a Class E felony, except that the maximum fine
3 shall be \$10,000.”

4 (1) (1) Section 9(c) of the Voting Rights Act of 1965 (79 Stat.
5 441) is amended by inserting before the period at the end thereof “in
6 accordance with Subchapter C of chapter 6 of title 18, United States
7 Code”.

8 (2) Section 11 of such Act is repealed.

9 (3) Section 12 of such Act is amended by repealing subsections (a)
10 and (d).

11 (4) Subsection (a) of section 14 of such Act is amended by striking
12 “1995 of this title” and inserting in lieu thereof “Subchapter C of
13 chapter 6 of title 18, United States Code”.

14 (5) Subsection (i) of section 7 of such Act is repealed.

15 (6) Section 204 of such Act is amended by striking “or attempt to
16 deprive,”.

17 (7) Subsection (b) of section 303 of such Act is amended to read as
18 follows: “Whoever shall deny any person any right secured by this
19 subchapter shall be guilty of a Class E felony, except that the maxi-
20 mum fine shall be \$5,000.”

21 (m) (1) Section 101 (8) of the Clean Air Act (79 Stat. 994) is
22 amended by inserting “knowingly” immediately after the word “who”
23 the first time it appears.

24 (2) Subsection (b) of section 8 of such Act is amended by striking
25 “section 7” and inserting in lieu thereof “section 2-6F1 of title 18,
26 United States Code”.

27 (3) Section 210 of such Act is amended by striking “1905” and
28 inserting in lieu thereof “2-6F1”.

29 (n) (1) Section 301 of the Civil Rights Act of 1960 (74 Stat. 88)
30 is amended by striking the last sentence and inserting in lieu thereof
31 the following: “Any officer of election or custodian who knowingly
32 fails to comply with this section shall be guilty of a Class E felony.”

33 (2) Section 302 of such Act is amended to read as follows:

34 “Sec. 302. Any person whether or not an officer of election or cus-
35 todian who knowingly steals, destroys, conceals, mutilates or alters
36 any record or paper required by section 301 shall be subject to sections
37 2-8D3, 2-8E1, 2-8E2, and 2-8E6 of title 18, United States Code.”

38 (o) (1) Subsection (g) of section 102 of the Civil Rights Act of
39 1957 (71 Stat. 634) is amended to read as follows:

1 “(g) No evidence or testimony or summary of evidence or testi-
2 mony taken in executive session may be released or used in public
3 without the consent of the Commission. Whoever knowingly releases
4 or uses in public without the consent of the Commission such evidence
5 or testimony taken in executive session shall be guilty of
6 a misdemeanor.”

7 (2) (A) Subsection (d) of section 105 of such Act is amended by
8 striking “of sections 281, 283, 284, 434, and 1914”.

9 (B) Subsection (g) of such section is amended by inserting im-
10 mediately before the period at the end thereof “as provided in sections
11 2-6C2 and 2-6C6 of title 18, United States Code”.

12 (p) Section 1 of the Revised Statutes dated June 25, 1948 (69
13 Stat. 902), is amended by striking “of section 1990 of this title or of
14 sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes” and
15 inserting in lieu thereof “of sections 2-7F1, 2-7F5, 2-6B1, 2-6B3,
16 2-6D2, 2-6E3, 2-6E4, 2-6G1, 2-7F2, 2-6H1, 2-6B5, 2-7D1, 2-7D2, of
17 title 18, United States Code”.

18 (q) (1) Subsection (a) of section 706 of the Civil Rights Act of
19 1964 (78 Stat. 259) is amended by striking the last sentence and in-
20 serting in lieu thereof “any officer or employee of the Commission
21 who shall make public in any manner whatsoever, any information in
22 violation of this subsection, shall be deemed guilty of a misdemeanor.”

23 (2) Subsection (e) of section 709 of such Act is amended by strik-
24 ing the last sentence thereof.

25 (3) Subsection (b) of section 711 of such Act is amended to read
26 as follows:

27 “(b) A person knowingly violating any of the provisions of this
28 subsection shall be guilty of a misdemeanor, except that the maxi-
29 mum fine shall be \$100 for each separate offense.”

30 (4) Subsection (b) of section 1713 of such Act is amended by strik-
31 ing “no person shall be subject to any liability or punishment for or
32 on account of” and inserting in lieu thereof “it shall be an affirmative
33 defence if”.

34 (5) Section 103(b) of such Act is amended by striking the last
35 sentence.

36 (6) (A) The first paragraph of section 1101 of such Act is amended
37 by striking the last sentence and inserting in lieu thereof the following:
38 “Upon conviction the accused shall be guilty of a Class E felony.”

39 (B) Such section is further amended by inserting immediately after
40 the second paragraph the following: “Such person shall be subject

1 to subchapter C of chapter 6 of title 18 of the United States Code.
2 (C) Such section is further amended by striking the third paragraph
3 thereof.

4 (r) (1) Section 222 of the Act of August 1, 1946 (68 Stat. 958), is
5 amended to read as follows:

6 "SEC. 222. Whoever knowingly violates any provision of this Act or
7 whoever unlawfully interferes with any recapture or entry under this
8 Act shall be guilty of a Class E felony, except that the maximum fine
9 shall be \$10,000.

10 (2) Section 223 of such Act is amended to read as follows:

11 "SEC. 223. Whoever knowingly violates any provision of this Act
12 for which no criminal penalty is specifically provided or of any rule,
13 regulation, or order prescribed or issued under this Act shall be guilty
14 of a Class E felony, except that the maximum fine shall be \$5,000.

15 (3) Section 224 of such Act is repealed.

16 (4) Section 225 of such Act is repealed.

17 (5) Section 226 of such Act is repealed.

18 (6) (A) Section 229(b) of such Act is amended to read as follows:

19 "(b) Whoever shall knowingly violate any regulation of the Com-
20 mission issued pursuant to subsection (a) of this section shall be guilty
21 of a regulatory offense under section 2-8F6 of title 18, United States
22 Code."

23 (B) Section 229(c) of such Act is amended to read as follows:

24 "(c) Whoever shall knowingly violate any regulation of the Com-
25 mission issued pursuant to subsection (a) of this subsection with re-
26 spect to any installation or other property which is enclosed by a
27 fence, wall, floor, or roof or other structural barrier shall be guilty
28 of a Class E felony, except that the maximum fine shall be \$5,000.

29 (7) Section 230 of such Act is amended by striking "it shall be an
30 offense punishable by a fine of not more than \$1,000 or imprisonment
31 for not more than 1 year, or both" and inserting in lieu thereof "it
32 shall be a Class E felony".

33 (s) Section 6(g) of the Act of November 18, 1969 (83 Stat. 199),
34 is amended to read as follows:

35 "(g) Any person who fails to comply with the filing requirements
36 of this section shall be guilty of a Class E felony."

37 (t) Section 301 of the Economic Opportunity Amendments of 1967
38 (81 Stat. 728) is amended to read as follows:

39 "SEC. 301. Whoever, by threat of procuring dismissal of any person
40 from employment or of refusal to employ or refusal to negotiate a

1 contract of employment in connection with a grant or contract of as-
2 sistance under this Act, induces any person to give up any money or
3 entity of any value to any person (including such grantee agency)
4 shall be guilty of a Class E felony."

5 (u) (1) Section 508(a) of the Public Works and Economic De-
6 velopment Act of 1965 (79 Stat. 568) is amended by striking the last
7 sentence and inserting in lieu thereof the following: "Any person who
8 shall violate the provisions of this subsection shall be guilty of a Class
9 E felony, except that the maximum fine shall be \$10,000."

10 (2) Section 508(c) of such Act is amended by striking the last sen-
11 tence and inserting in lieu thereof the following: "Any person who
12 shall violate the provisions of this subsection shall be guilty of a Class
13 E felony, except that the maximum fine shall be \$5,000."

14 (3) Section 508(d) of such Act is amended by striking "sections
15 202 through 209" and inserting in lieu thereof "section 2-6F3".

16 (4) Section 508(e) of such Act is amended by striking "sections
17 202 through 209" and inserting in lieu thereof "section 2-6F3".

18 (5) Section 710 of such Act is amended to read as follows: "Who-
19 ever gives any unauthorized information concerning any future action
20 or plan of the Secretary which might affect the value of securities or
21 having such knowledge reviewed or speculated, directly or indirectly,
22 or the securities or property of any company or corporation receiving
23 loans, grants, or other assistance from the Secretary shall be guilty
24 of a Class E felony, except that the maximum fine shall be \$10,000."

25 (v) Section 316 of the Narcotics Addict Rehabilitation Act of 1966
26 is repealed.

27 (w) (1) Section 810(a) of the Act of April 11, 1968 (82 Stat. 85),
28 is amended by striking the last sentence.

29 (2) Section 811(f) of such Act is amended to read as follows: "Any
30 person who with intent to mislead the Secretary shall make or cause to
31 be made any false entry or statement of fact in any report, account,
32 or other document submitted to the Secretary pursuant to his subpoena
33 or other order or shall knowingly neglect or fail to make or cause to be
34 made, full, true and incorrect entries in such reports or accounts or
35 other documents or shall knowingly mutilate, alter, or by any other
36 means, falsify any documentary evidence, shall be guilty of a Class E
37 felony."

38 (3) Section 901 of such Act is repealed.

39 PART II—TITLE 43, U.S.C., AMENDMENTS

40 SEC. 359. (a) (1) Section 3 of the Act of January 31, 1903 (Stat.
41 790; 43 U.S.C. 104), is amended to read as follows:

1 “SEC. 3. Section 2-6C2 of title 18, United States Code, shall apply
2 in the case of any person lawfully ordered to appear at a hearing con-
3 ducted by the Secretary of the Interior or his designee. In the case
4 of contumacy, failure, or refusal of any person to obey such an order,
5 any District Court of the United States or of any Territory or pos-
6 session, or the United States District Court for the District of Co-
7 lumbia, within the jurisdiction of which the inquiry is carried on, or
8 within the jurisdiction of which such person who is guilty of contu-
9 macy, failure or refusal is found, or resides or transacts business, upon
10 the application by the Secretary of the Interior or his designee, shall
11 have jurisdiction to issue to such person an order requiring such person
12 to appear before him or his designee, and to give testimony relating to
13 the matter under investigation or in question.”.

14 (2) The third sentence of section 4 of such Act (32 Stat. 790; 43
15 U.S.C. 105) is amended to read as follows: “Subpenas for witnesses
16 before the officer taking depositions may issue from the office of the offi-
17 cer designated by the Secretary of the Interior or may be issued
18 by the officer taking the depositions and section 2-6C2 of title 18,
19 United States Code, shall apply in the case of subpenas so issued; and
20 the witness shall receive the same fees and mileage as provided in
21 section 2 of this Act.”

22 (b) The last sentence of section 2300 of the Revised Statutes, as
23 amended (43 U.S.C. 183), is amended by striking out “person, firm
24 or corporation” and inserting in lieu thereof “person or firm”.

25 (c) (1) Section 2294 of the Revised Statutes, as amended (43
26 U.S.C. 254), is amended by striking out the third sentence.

27 (2) The second paragraph of such section 2294 is amended by strik-
28 ing out all after “guilty” and inserting in lieu thereof “of a mis-
29 demeanor.”.

30 (d) Section 2 of the Taylor Grazing Act (48 Stat. 1270; 43 U.S.C.
31 315a) is amended by striking out all after “shall be punishable” and
32 inserting in lieu thereof “as a regulatory offense under section 2-8F6
33 of title 18, United States Code, except that the maximum fine shall
34 be \$500.”.

35 (e) Section 3 of the Act of August 21, 1916 (39 Stat. 518; 43 U.S.C.
36 362) is repealed.

37 (f) Section 4 of the Act of February 25, 1885, as amended (23
38 Stat. 322; 43 U.S.C. 1064), is amended to read as follows:

39 “SEC. 4. Any person violating any of the provisions of this Act
40 shall be guilty of a Class E felony, except the the maximum fine shall
41 be \$1,000.”.

(g) Section 24 of the Act of May 2, 1890, as amended (26 Stat. 92; 43 U.S.C. 1096), is repealed.

(h) Section 2471 of the Revised Statutes (43 U.S.C. 1191) is repealed.

(i) Section 2 of the Act of June 3, 1948 (62 Stat. 301; 43 U.S.C. 1212), is repealed.

(j) (1) The second sentence of section 4 (e) of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1333) is amended by striking out all after "shall be" and inserting in lieu thereof the following: "guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$100."

(2) The first sentence of section 5(a) (2) of such Act (67 Stat. 464; 43 U.S.C. 1334(a) (2)) is amended—

(A) by striking out "knowingly and"; and

(B) by striking out all after "shall be" and inserting in lieu thereof "guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$2,000, and each day of violation shall be deemed to be a separate offense."

SEC. 60 (a) This section may be cited as the "Miscellaneous Public Lands Crimes Act of 1973".

(b) As used in this subsection and in the Act of September 25, 1970 (84 Stat. 870; 31 U.S.C. 488b), the name or character "Johnny Horizon", means the representation of a tall, lean man, with strong facial features, who wears slacks and sport shirt buttoned to the collar (both green, when colored), no tie, a field jacket (red, when colored), boot-type shoes (brown, when colored) and who carries a backpack, which was originated by the Bureau of Land Management, United States Department of the Interior, as the official symbol for a public service antilitter program to maintain the beauty and utility of the Nation's public lands. Whoever, except as authorized under rules and regulations issued by the Secretary of the Interior, knowingly manufactures, reproduces, or uses the character "Johnny Horizon" as a trade name or mark, or in such manner as suggests the character "Johnny Horizon", so that such use is likely to cause confusion, or to cause mistake, or to deceive shall be guilty of a misdemeanor, except that the maximum fine shall be \$250. This subsection shall not make unlawful the use of any such emblem, sign, insignia, or words which was lawful on the date of enactment of this Act. A violation of this subsection may be enjoined at the suit of the United States Attorney, upon complaint by the Secretary of the Interior.

(c) Whoever (1) bargains, contracts, or agrees with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale, or (2) by intimidation hinders or prevents any person from bidding upon or purchasing any tract of land so offered for sale shall be guilty of a misdemeanor, except that no prison term shall be imposed and the maximum fine shall be \$1,000.

(d) Whoever, for a reward paid or promised to him in that behalf, undertakes to locate for an intending purchaser, settler, or entryman any public lands of the United States subject to disposition under the public land laws, and who knowingly represents to such intending purchaser, settler, or entryman that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who, in reckless disregard to the truth, falsely represents to any such person that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, shall be guilty of a Class E felony, except that the maximum fine shall be \$300.

PART KK—TITLE 44, U.S.C., AMENDMENTS

SEC. 361. (a) Chapter 5 of title 44, United States Code, is amended by adding at the end thereof the following new section:

“§ 518. Printing contracts

“(a) Neither the Public Printer, superintendent of printing, superintendent of binding, nor any of his assistants shall, during their continuance in office, have any interest, direct or indirect in the publication of any newspaper or periodical, or in any printing, binding, engraving, or lithographing of any kind, or in any contract for furnishing paper or other material connected with the public printing, binding, lithographing, or engraving.

“(b) Whoever violates this section shall be guilty of a misdemeanor, except that the maximum fine shall be \$1,000.”

(b) The analysis of Chapter 5 of title 44, United States Code, is amended by adding at the end thereof the following new item:

“518. Printing contracts.”

PART LL—TITLE 45, U.S.C., AMENDMENTS

SEC. 362. (a) Section 2 of the Act of May 6, 1910 (45 U.S.C. 39), is amended by deleting “misdemeanor” and inserting in lieu thereof “regulatory offense under section 2–8F6 of title 18, United States Code”.

1 (b) Section 10 of the Employers' Liability Act of 1908 (45 U.S.C.
2 60) is amended by deleting "punished by a fine of not more than \$1,000
3 or imprisoned for not more than one year, or by both such fine and
4 imprisonment, for each offense:" and inserting in lieu thereof "guilty
5 of a Class E felony:".

6 (c) Section 5 (c) of the Hours of Service Act (45 U.S.C. 64a(c))
7 is amended by deleting "prosecutions" and inserting in lieu thereof
8 "suits".

9 (d) Section 1 of the Act of September 3, 5, 1916 (45 U.S.C. 65),
10 is amended (1) by deleting "except railroads independently owned
11 and operated not exceeding one hundred miles in length, electric street
12 railroads, and electric interurban railroads," wherever it appears
13 therein; and (2) by deleting, beginning with the colon, the proviso at
14 the end thereof.

15 (e) Section 4 of the Act of September 3, 5, 1916 (45 U.S.C. 66),
16 is amended to read as follows:

17 "SEC. 4. Any person violating any provision of section 1 of this Act
18 shall be guilty of a Class E felony, except that the minimum fine shall
19 be \$100 and the maximum fine shall be \$1,000. It shall be a defense to
20 any prosecution under this section in connection with a charge of
21 violating such section 1 that any railroad involved in such charge is
22 (1) a railroad which was independently owned and operated, which
23 did not exceed one hundred miles in length, and whose principal
24 business was not leasing or furnishing terminal or transfer facilities to
25 other railroads, and which was not engaged in transfers of freight
26 between railroads or between railroads and industrial plants; (2) an
27 electric street railroad; or (3) an electric interurban railroad."

28 (f) Section 5256 of the Revised Statutes (45 U.S.C. 81) is amended
29 by deleting "punished by imprisonment not exceeding two years, and
30 by fine not exceeding five thousand dollars." and inserting in lieu
31 thereof "guilty of a Class E felony, except that the maximum fine shall
32 be \$5,000."

33 (g) Section 15 of the Act of July 2, 1864 (45 U.S.C. 83), is amended
34 by deleting "misdemeanor, and, upon conviction thereof, shall be fined
35 in any sum not exceeding one thousand dollars, and may be imprisoned
36 not less than six months." and inserting in lieu thereof "misdemeanor,
37 except that the maximum fine shall be \$1,000."

38 (h) The paragraph designated "Tenth" in section 2 of the Railroad
39 Labor Act (45 U.S.C. 152), is amended (1) by deleting "The willful
40 failure or refusal of any carrier, its officers or agents," and inserting

1 "Any carrier which knowingly fails or refuses"; and (2) by deleting
2 "a misdemeanor, and upon conviction thereof the carrier, officer, or
3 agent offending shall be subject to a fine of not less than \$1,000, nor
4 more than \$20,000, or imprisonment for not more than six months, or
5 both fine and imprisonment, for each offense, and each day during
6 which such carrier, officer, or agent shall willfully fail or refuse to
7 comply with the terms of the said paragraphs of this section shall con-
8 stitute a separate offense." and inserting in lieu thereof "guilty of a
9 misdemeanor, except that the minimum fine shall be \$1,000 and the
10 maximum fine shall be \$20,000, for each offense. Each day during
11 which such carrier shall knowingly fail or refuse to comply with the
12 terms of the said paragraphs of this section shall constitute a separate
13 offense."

14 (i) Section 13(a) of the Railroad Retirement Act of 1937 (45 U.S.C.
15 228m) is amended (1) by deleting "willfully" and inserting "know-
16 ingly"; and (2) by deleting all that part of the text thereof following
17 the comma immediately after "Railroad Retirement Act of 1937"
18 and inserting in lieu thereof "shall be guilty of a Class E felony, except
19 that the maximum fine shall be \$10,000."

20 (j) Subsection (a-2) (i) (B) of section 4 of the Railroad Unemploy-
21 ment Insurance Act (45 U.S.C. 354) is amended by deleting "subject
22 to the penalty provisions of section 9 (a) of this Act".

23 (k) Section 5 (i) of the Railroad Unemployment Insurance Act
24 (45 U.S.C. 355) is amended by deleting "punished by a fine of not
25 more than \$10,000 or by imprisonment not exceeding one year." and
26 inserting in lieu thereof "guilty of a Class E felony, except that the
27 maximum fine shall be \$10,000."

28 (l) Section 9 (a) of the Railroad Unemployment Insurance Act
29 (45 U.S.C. 359) is amended to read as follows:

30 "(a) Any person who shall knowingly fail or refuse to make any
31 report or furnish any information required by the Board in the ad-
32 ministration of this Act shall be guilty of a Class E felony, except that
33 the maximum fine shall be \$10,000."

34 (m) Section 9 (b) of the Railroad Unemployment Insurance Act
35 (45 U.S.C. 359) is amended by deleting "punished for each such
36 violation by a fine of not more than \$10,000 or by imprisonment not
37 exceeding one year, or both." and inserting in lieu thereof "guilty of
38 a Class E felony, except that the maximum fine shall be \$10,000."

39 (n) Section 9(c) of the Railway Unemployment Insurance Act
40 (45 U.S.C. 359) is amended by deleting "punished for each such vio-

lation by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.” and inserting in lieu thereof “guilty of a regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$1,000.”.

PART MM—TITLE 46, U.S.C., AMENDMENTS

SEC. 363. (a) Section 5294 of the Revised Statutes, as amended (46 U.S.C. 7), is amended by striking out “fine, penalty,” and inserting in lieu thereof “penalty”.

(b) Section 26 of the Act of June 26, 1884, as amended (46 U.S.C. 8), is amended by striking out “fine,” each place it appears therein.

(c) Section 4144 of the Revised Statutes (46 U.S.C. 22) is amended by striking out “, but the master shall be liable to a penalty of \$1,000”.

(d) Section 4177 of the Revised Statutes, as amended (46 U.S.C. 45), is amended by striking out “fine” and inserting in lieu thereof “civil penalty”.

(e) Section 4187 of the Revised Statutes (46 U.S.C. 58) is repealed.

(f) Section 4188 of the Revised Statutes (46 U.S.C. 59) is amended by striking out all after “punishable by a ” and inserting in lieu thereof “civil penalty of \$500.”

(g) Section 4191 of the Revised Statutes (46 U.S.C. 62) is repealed.

(h) The last paragraph of section 4153 of the Revised Statutes, as amended (46 U.S.C. 77), is amended by striking out “fine” and inserting in lieu thereof “civil penalty”.

(i) Section 13 of the Act of September 29, 1965 (46 U.S.C. 83i), is repealed.

(j) The last sentence of section 7 of the Act of March 2, 1929, as amended (46 U.S.C. 85f), is amended by striking out “or fine”.

(k) Section 8 of the Act of March 2, 1929, as amended (46 U.S.C. 85g), is amended as follows:

(1) in subsections (a), (b), and (c), strike out “offense” each place it appears and insert in lieu thereof “violation”.

(2) in subsection (d), strike out all after “guilty of a” and insert in lieu thereof “misdemeanor, except that the maximum prison term shall be 3 months.”;

(3) in subsection (e), strike out all after “guilty of a” and insert in lieu thereof “Class E felony, except that the maximum fine shall be \$2,000”, and strike out “, or shall suffer any person under his control to conceal, remove, alter, deface, or obliterate”.

(l) (1) Section 7 of the Coastwise Load Line Act, as amended (46 U.S.C. 88f), is amended by striking out “or fine” in the last sentence.

(2) Section 8 of such Act, as amended (46 U.S.C. 88g), is amended as follows:

(A) in subsections (a), (b), and (c), strike out "offense" each place it appears and insert in lieu thereof "violation".

(B) in subsection (d), strike out all after "guilty of a" and insert in lieu thereof "misdemeanor, except that the maximum prison term shall be 3 months.";

(C) in subsection (e), strike out all after "guilty of a" and insert in lieu thereof "Class E felony, except that the maximum fine shall be \$2,000.", and strike out ", or shall suffer any person under his control to conceal, remove, alter, deface, or obliterate".

(m) Section 4197 of the Revised Statutes, as amended (46 U.S.C. 91), is amended by striking out "offense" and inserting in lieu thereof "violation".

(n) Section 4213 of the Revised Statutes, as amended (46 U.S.C. 101), is amended by striking out "fine" and inserting in lieu thereof "civil penalty".

(o) Section 17 of the Act of June 19, 1886 (46 U.S.C. 142), is amended by striking out all after "forfeiture to the United States" and inserting in lieu thereof a period.

(p) The last sentence of the Act of March 3, 1887 (46 U.S.C. 143), is amended by striking out all after "made in pursuance hereof" and inserting in lieu thereof "shall be guilty of a Class E felony."

(q) (1) The second sentence of the first section of the Passenger Act of 1882, as amended (46 U.S.C. 151), is amended—

(A) by striking out "misdemeanor" and inserting in lieu thereof "violation"; and

(B) by striking out all after "the said master" and inserting in lieu thereof "shall be guilty of a misdemeanor, except that the maximum fine shall be \$50 for each such passenger."

(2) The last paragraph of section 2 of such Act (46 U.S.C. 152) is amended by striking out "fine" and inserting in lieu thereof "civil penalty".

(3) The first sentence of the last paragraph of section 4 of such Act (46 U.S.C. 154) is amended—

(A) by striking out "willful" and inserting in lieu thereof "knowing"; and

(B) by striking out all after "vessel shall be" in the first sentence and inserting in lieu thereof "guilty of a misdemeanor, except that the maximum fine shall be \$500."

1 (4) The second sentence of section 8 of such Act, as amended (46
2 U.S.C. 156a), is amended by striking out all after "vessel shall be"
3 and inserting in lieu thereof "guilty of a Class E felony."

4 (5) Section 7 of such Act, as amended (46 U.S.C. 157), is amended
5 to read as follows:

6 "SEC. 7. Neither the officers, seamen, nor other persons employed on
7 any such steamship or other vessel shall visit or frequent any part of
8 the vessel provided or assigned to the use of such passengers, except by
9 the direction or permission of the master of such vessel first made or
10 given for such purpose. Any officer, seaman, or other person employed
11 on board of such vessel who violates the provisions of this section shall
12 be guilty of a misdemeanor, except that the maximum fine shall be \$100
13 and the maximum prison term shall be 20 days, for each violation. The
14 master of such vessel who directs or permits any officer, seaman, or
15 other person employed on board the vessel to visit or frequent any part
16 of the vessel provided for or assigned to the use of such passengers, or
17 the compartments or spaces occupied by such passengers, except for
18 the purpose of doing or performing some necessary act or duty as an
19 officer, seaman, or other person employed on board of the vessel, shall
20 be guilty of a violation for each time he directs or permits the provi-
21 sions of this section to be violated. A copy of this section, written or
22 printed in the language or principal languages of the passengers on
23 board, shall, by or under the direction of the master of the vessel, be
24 posted in a conspicuous place on the forecastle and in the several parts
25 of the vessel provided and assigned for the use of such passengers, and
26 in each compartment or space occupied by such passengers, and the
27 same shall be kept so posted during the voyage; and if any such master
28 neglects so to do, he shall be guilty of a violation."

29 (6) The last sentence of section 9 of such Act, as amended (46
30 U.S.C. 158), is amended by striking out "fine" and inserting in lieu
31 thereof "civil penalty".

32 (7) Section 12 of such Act (46 U.S.C. 161) is amended by striking
33 out "deemed guilty of a misdemeanor, and may be fined not exceeding
34 \$1,000, and be imprisoned not exceeding one year" and inserting in
35 lieu thereof "guilty of a Class E felony".

36 (r) Section 2 of the Act entitled "An Act concerning the boarding
37 of vessels", as amended (46 U.S.C. 163), is amended by striking out
38 "subject to a penalty of not more than \$100 or imprisonment not to
39 exceed six months, or both, in the discretion of the court" and inserting

1 in lieu thereof "guilty of a regulatory offense under section 2-8F6 of
2 title 18, United States Code".

3 (s) (1) The first sentence of section 4472 (14) of the Revised Stat-
4 utes, as amended (46 U.S.C. 170(14)), is amended by striking out
5 "subject to a penalty of not more than \$2,000 for each violation" and
6 inserting in lieu thereof "guilty of a regulatory offense under section
7 2-8F6 of title 18, United States Code".

8 (2) Section 4472 (15) of the Revised Statutes is repealed.

9 (t) Section 5 of the Act of February 13, 1893 (46 U.S.C. 194), is
10 amended—

11 (1) by striking out "fine" each place it appears and inserting
12 in lieu thereof "civil penalty";

13 (2) by striking out "vessel guilty of" and inserting in lieu
14 thereof "vessel who committed"; and

15 (3) by striking out "is guilty of" and inserting in lieu thereof
16 "has committed".

17 (u) Section 4292 of the Revised Statutes (46 U.S.C. 203) is amended
18 by striking out "offense" and inserting in lieu thereof "violation".

19 (v) Section 4438a(10) of the Revised Statutes, as amended (46
20 U.S.C. 224a(10)), is amended by striking out "fine or".

21 (w) (1) Section 5 of the Act of May 12, 1948, as amended (46 U.S.C.
22 229e), is amended—

23 (A) by striking out the third paragraph; and

24 (B) by striking out ", for every such offense, upon conviction,
25 be punished by a fine of not more than \$500 or by imprisonment
26 at hard labor for a term not exceeding three years" in the last
27 paragraph and inserting in lieu thereof "be guilty of a Class E
28 felony".

29 (2) Section 6 of such Act (46 U.S.C. 229f) is amended by striking
30 out "fine" and inserting in lieu thereof "civil penalty."

31 (x) Section 4445 of the Revised Statutes, as amended (46 U.S.C.
32 231), is amended—

33 (1) by striking out the third sentence; and

34 (2) by striking out all after "of the Revised Statutes, shall"
35 in the last sentence and inserting in lieu thereof "be guilty of a
36 Class E felony."

37 (y) Section 4446 of the Revised Statutes, as amended (46 U.S.C.
38 232), is amended by striking out "fine" and inserting in lieu thereof
39 "civil penalty".

(z) The last sentence of section 3 of the Act of May 11, 1918 (46 U.S.C. 235), is amended to read as follows: "Any person committing a violation of this section shall be subject to a penalty of \$100."

(aa) Section 4450 of the Revised Statutes, as amended (46 U.S.C. 239), is repealed.

(bb) Section 2 of the Act of July 15, 1954 (46 U.S.C. 293b), is amended by striking out "ten" each place it appears and inserting in lieu thereof "five".

(cc) Section 5 of the Act of August 5, 1939 (46 U.S.C. 246), is amended as follows:

(1) In subsection (a) strike out "offense", and insert in lieu thereof "violation".

(2) In subsection (b) strike out "\$100", and insert in lieu thereof "\$1,000".

(dd) The last sentence of section 4 of the Act of July 24, 1956 (46 U.S.C. 249c), is amended to read as follows: "Violation of any provision of this section is a misdemeanor, except that the maximum fine shall be \$250."

(ee) Section 4311(c) of the Revised Statutes, as amended (46 U.S.C. 251(c)), is amended by striking out "offense" and inserting in lieu thereof "violation".

(ff) Section 2 of the Act of September 13, 1961 (46 U.S.C. 251a), is amended by striking out "fine, penalty," and inserting in lieu thereof "penalty".

(gg) Section 4336 of the Revised Statutes, as amended (46 U.S.C. 277), is amended by striking out all after "charge or command shall be" and inserting in lieu thereof "guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."

(hh) Section 4370(a) of the Revised Statutes, as amended (46 U.S.C. 316(a)), is amended by striking out "fine" and "fines" and inserting in lieu thereof "penalty" and "penalties", respectively.

(ii) (1) Section 7 of the Act of June 19, 1886, as amended (46 U.S.C. 319), is amended by striking out "fine" each place it appears and inserting in lieu thereof "civil penalty".

(2) Section 9 of such Act, as amended (46 U.S.C. 320), is amended (A) by striking out "fines" and inserting in lieu thereof "penalties"; and (B) by striking out "offense" and inserting in lieu thereof "violation".

(jj) Section 4373 of the Revised Statutes, as amended (46 U.S.C. 321), is repealed.

1 (kk) Section 4374 of the Revised Statutes (46 U.S.C. 322) is amend-
2 ed by striking out all after "of like sum for the second offense" and
3 inserting in lieu thereof a period.

4 (ll) Sections 4375 and 4376 of the Revised Statutes (46 U.S.C. 323
5 and 324) are repealed.

6 (mm) Section 5(e) of the Act of May 27, 1936, as amended (46
7 U.S.C. 369(e)), is repealed.

8 (nn) Section 4417a(10)(B) of the Revised Statutes, as amended
9 (46 U.S.C. 391a(10)(B)), is amended by striking all after "shall be"
10 and inserting in lieu thereof "guilty of a Class C felony, except that
11 the minimum fine imposed shall be not less than \$5,000 and the maxi-
12 mum fine shall shall be not more than \$50,000."

13 (oo) Section 13 of the Act of May 28, 1908 (46 U.S.C. 398), is
14 amended by striking out "offense" and inserting in lieu thereof
15 "violation".

16 (pp) Section 4425 of the Revised Statutes (46 U.S.C. 403) is
17 repealed.

18 (qq) The first sentence of section 4429 of the Revised Statutes, as
19 amended (46 U.S.C. 407), is amended by striking out "fined" and
20 inserting in lieu thereof "liable to a civil penalty of".

21 (rr) Section 4430 of the Revised Statutes, as amended (46 U.S.C.
22 408), is amended by striking out the proviso in the second paragraph
23 and inserting in lieu thereof a period.

24 (ss) Section 4432 of the Revised Statutes, as amended (46 U.S.C.
25 410), is repealed.

26 (tt) Section 4437 of the Revised Statutes (46 U.S.C. 413) is
27 amended—

28 (1) by striking out "intentionally" and inserting in lieu thereof
29 "knowingly";

30 (2) by striking out "every person concerned therein, directly
31 or indirectly" and inserting in lieu thereof "a person violating
32 the provisions of this section"; and

33 (3) by striking out "misdemeanor, and shall be fined \$200,
34 and may also be imprisoned not exceeding five years" and insert-
35 ing in lieu thereof "Class E felony, except that the maximum
36 fine shall be \$200".

37 (uu) The second sentence of section 4465 of the Revised Statutes,
38 as amended (46 U.S.C. 452), is amended by striking out all after "shall
39 be" and inserting in lieu thereof "guilty of a misdemeanor, except
40 that the maximum fine shall be \$100".

(vv) Section 4478 of the Revised Statutes (46 U.S.C. 471) is amended by striking out “fined” and inserting in lieu thereof “liable to a civil penalty of”.

(ww) Section 4488(d) of the Revised Statutes, as amended (46 U.S.C. 481(d)), is amended—

(1) by striking out “willfully and”; and

(2) by striking out all after “shall be” and inserting in lieu thereof “guilty of an E felony”.

(xx) Section 4499 of the Revised Statutes, as amended (46 U.S.C. 497), is amended by striking out “offense” each place it appears and inserting in lieu thereof “violation”.

(yy) Section 4500 of the Revised Statutes (46 U.S.C. 498) is amended by striking out “a fine of” and inserting in lieu thereof “not more than”.

(zz) Section 14 of the Act of April 25, 1940 (46 U.S.C. 526m), is repealed.

(aaa) The second sentence of section 17 of the Act of April 25, 1940, as amended (46 U.S.C. 526p), is amended by striking out “fine, penalty,” and inserting in lieu thereof “penalty”.

(bbb) Section 2 of the Act of June 19, 1886, as amended (46 U.S.C. 563), is amended by striking out everything after “shall be” and inserting in lieu thereof “guilty of a misdemeanor, except that the maximum fine shall be \$500”.

(ccc) Section 4511 of the Revised Statutes, as amended (46 U.S.C. 564), is amended by striking out “fines” in paragraph Seventh and inserting in lieu thereof “penalties”.

(ddd) Section 10 of the Act of June 26, 1884, as amended (46 U.S.C. 599), is amended as follows:

(1) In subsection (a)—

(A) strike out all after “shall be” in the second sentence and insert in lieu thereof “guilty of a misdemeanor, except that the fine shall be not less than \$25 nor more than \$100.”;

(B) strike out all after “shall be” in the last sentence and insert in lieu thereof “guilty of a misdemeanor, except that the maximum fine shall be \$500”.

(2) In subsection (d) strike out the second sentence.

(eee) Section 4551 of the Revised Statutes, as amended (46 U.S.C. 643), is amended as follows:

(1) In subsection (a), strike out the last sentence.

(2) In the first paragraph of subsection (g), strike out all after “shall be” and insert in lieu thereof “guilty of a Class E felony.”

(3) In subsection (g), strike out the second paragraph.

(4) In subsection (k), strike out “fined” and insert in lieu thereof “liable to a civil penalty”, and strike out “offense” and insert in lieu thereof “violation”.

(fff) Section 4555 of the Revised Statutes, as amended (46 U.S.C. 652), is amended (1) by striking out all after “on any such matter” and inserting in lieu thereof a period, and (2) by adding at the end thereof the following new sentence: “Any such Coast Guard official is authorized to seek the aid of any district court in carrying out the provisions of this section.”

(ggg) Section 4561 of the Revised Statutes, as amended (46 U.S.C. 658), is amended by striking out the third sentence.

(hhh) Section 4563 of the Revised Statutes, as amended (46 U.S.C. 660), is amended by striking out all after “in addition thereto,” and inserting in lieu thereof “each such master shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code.

(iii) Section 13(i) of the Act of March 4, 1915, as amended (46 U.S.C. 672 (i)), is amended by striking out “offense” and inserting in lieu thereof “violation”.

(jjj) Paragraph Fifth of section 4575 of the Revised Statutes, as amended (46 U.S.C. 676), is amended by striking out “be punishable by a fine of \$100 for each offense” and inserting in lieu thereof “be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code”.

(kkk) The last sentence of section 4582 of the Revised Statutes, as amended (46 U.S.C. 684), is amended by striking out “fine” and inserting in lieu thereof “civil penalty”.

(lll) Section 4596 of the Revised Statutes, as amended (46 U.S.C. 701), is amended as follows:

(1) Strike out paragraph Sixth.

(2) In paragraph Seventh, strike out all after “sustained” and insert in lieu thereof a period.

(3) In paragraph Eighth, strike out all after “such liability” and insert in lieu thereof a period.

(mmm) Section 4605 of the Revised Statutes, as amended (46 U.S.C. 707), is repealed.

(nnn) The first sentence of section 4607 of the Revised Statutes, as amended (6 U.S.C. 709), is amended by striking out all after "such offense" and inserting in lieu thereof the following: ", be guilty of a misdemeanor, except that the maximum fine shall be \$50, and the maximum prison term shall be three months."

(ooo) Section 4610 of the Revised Statutes, as amended (46 U.S.C. 711), is amended by striking out "and if a conviction is had, and the sum imposed as a penalty by the court is not paid either immediately after the conviction, or within such period as the court at the time of conviction appoints, it shall be lawful for the court to commit the offender to prison, there to be imprisoned for the term provided in case of such offense, the commitment to be terminable upon payment of the amount and costs;", and by striking out "offense" and "offender" each place they appear and inserting in lieu thereof "violation" and "violation", respectively.

(ppp) Section 4611 of the Revised Statutes, as amended (46 U.S.C. 712), is amended by striking out "2191" and inserting in lieu thereof "2-7C2 or 2-7D3".

(qqq) Section 2 of the Act of August 1, 1912 (46 U.S.C. 728), is amended by striking out all after "upon conviction," and inserting in lieu thereof "be guilty of a Class E felony."

(rrr) (1) Section 3(b) of the Act of June 25, 1936 (46 U.S.C. 738b (b)), is amended to read as follows:

"(b) Any owner or operating agent who violates this section shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."

(2) Section 4(b) of such Act (46 U.S.C. 738c (b)) is amended to read as follows:

"(b) If the master of any such ship fails to comply with this section, he shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."

(sss) (1) The last paragraph of section 9 of the Shipping Act, 1916, as amended (46 U.S.C. 808), is amended by striking out all after "shall be guilty of" and inserting in lieu thereof "a Class E felony, except that the maximum fine shall be \$5,000."

(2) The last paragraph of section 14 of such Act, as amended (46 U.S.C. 812), is amended by striking out "shall be guilty of a misdemeanor punishable by not more than \$25,000 for each such offense" and inserting in lieu thereof "shall be guilty of a violation, except that the maximum penalty shall be \$25,000".

1 (3) The last two paragraphs of section 16 of such Act (46 U.S.C.
2 815) are amended to read as follows:

3 "A violation of paragraph First or Third is a violation, except that
4 the maximum fine shall be \$5,000. Violation of any other provision
5 shall be grounds for a civil penalty of not more than \$1,000 for each
6 day such violation continues."

7 (4) The last sentence of section 21 of such Act, as amended (46
8 U.S.C. 820), is repealed.

9 (5) Section 32 of such Act (46 U.S.C. 831) is amended by striking
10 out all after "guilty of" and inserting in lieu thereof "a misdemeanor,
11 except that the maximum fine shall be \$5,000."

12 (6) Section 37 of such Act, as amended (46 U.S.C. 835), is amended
13 by striking out " , or attempts or conspires to violate ,".

14 (7) Section 38 of such Act, as amended (46 U.S.C. 836), is amended
15 by striking out "offenses against" and inserting in lieu thereof "vio-
16 lations of".

17 (8) Section 40 of such Act, as amended (46 U.S.C. 838), is amended
18 by striking out the second paragraph.

19 (9) Section 41 of such Act, as amended (46 U.S.C. 839), is amended
20 by striking out the second paragraph.

21 (ttt) (1) The last sentence of section 3 of the Act of July 7,
22 1960 (46 U.S.C. 817b), is amended by striking out all after "shall"
23 and inserting in lieu thereof "be guilty of a violation, except that a
24 fine of not less than \$500 nor more than \$10,000 shall be imposed for
25 each such violation at the discretion of the court."

26 (2) The last sentence of section 4 of such Act (46 U.S.C. 817c)
27 is amended by striking out all after "shall" and inserting in lieu
28 thereof "be guilty of a violation, except that a fine of not less than
29 \$500 nor more than \$10,000 shall be imposed for each such violation at
30 the discretion of the court."

31 (uuu) Subsection J(b) of section 30 of the Act of June 5, 1920 (46
32 U.S.C. 941(b)), is amended—

33 (1) by striking out "and if the mortgagor is a corporation
34 or association,"; and

35 (2) by striking out "held guilty of a misdemeanor and shall
36 be fined not more than \$1,000 or imprisoned not more than 2
37 years, or both" and inserting in lieu thereof "guilty of a Class E
38 felony".

39 (vvv) The first section of the Act of February 6, 1941 (46 U.S.C.
40 1119a), is amended by striking out the next to the last proviso thereof.

(www) (1) Section 302(e) of the Act of June 29, 1936, as amended (46 U.S.C. 1132(e)), is amended by striking out "be fined \$50 for each person so employed" and inserting in lieu thereof "be guilty of a violation for each person so employed, except that a fine of \$50 for each such person shall be imposed".

(2) Section 601 (b) of such Act, as amended (46 U.S.C. 1171(b)), is amended by striking out the last sentence.

(3) Section 807 of such Act (46 U.S.C. 1225) is amended by striking out "misdemeanor" and inserting in lieu thereof "regulatory offense under section 2-8F6 of title 18, United States Code".

(4) Section 806(b) of such Act (46 U.S.C. 1228(b)) is amended as follows:

(A) In the first paragraph, strike out the first sentence, and amend the second sentence to read as follows: "Any corporation which commits any act unlawful under this Act shall be guilty of a violation, except that the maximum fine shall be \$25,000."

(B) In the last paragraph, strike out "shall upon conviction thereof be subject to a fine of not more than \$500" and insert in lieu thereof "shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code".

(5) Section 1008 of such Act, as amended (46 U.S.C. 1277), is repealed.

(xxx) The text of section 3(e) of the Act of June 12, 1940 (46 U.S.C. 1333(e)), is amended to read as follows:

"Any person or association violating this section or any regulation issued under this section shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code."

SEC. 364. (a) This section may be cited as the "Miscellaneous Gambling Ship Crimes Act of 1973."

(b) As used in this section:

(1) The term "gambling ship" means a vessel used principally for the operation of one or more gambling establishments.

(2) The term "gambling establishment" means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

(3) The term "vessel" includes every kind of water and aircraft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship,

1 boat, barge, or other water craft or any structure capable of floating
2 on the water.

3 (4) The term "American vessel" means any vessel documented or
4 numbered under the laws of the United States, and includes any ves-
5 sel which is neither documented or numbered under the laws of the
6 United States nor documented under the laws of any foreign country,
7 if such vessel is owned by, chartered to, or otherwise controlled by one
8 or more citizens or residents of the United States or corporations or-
9 ganized under the laws of the United States or of any State.

10 (5) The term "wire communication facility" means any and all in-
11 strumentalities, personnel, and services (among other things, the re-
12 ceipt, forwarding, or delivery of communications) used or useful in
13 the transmission of writings, signs, pictures, and sounds of all kinds
14 by aid of wire, cable, or other like connection between the points of
15 origin and reception of such transmission.

16 (c) (1) It shall be unlawful for any citizen or resident of the United
17 States, or any other person who is on an American vessel or is other-
18 wise under or within the jurisdiction of the United States directly or
19 indirectly—

20 (A) to set up, operate, or own or hold any interest in any gam-
21 bling ship or any gambling establishment on any gambling ship;
22 or

23 (B) in pursuance of the operation of any gambling establish-
24 ment on any gambling ship, to conduct or deal any gambling
25 game, or to conduct or operate any gambling device, or to induce,
26 entice, solicit, or permit any person to bet or play at any such
27 establishment,

28 if such gambling ship is on the high seas, or is an American vessel or
29 otherwise under or within the jurisdiction of the United States, and
30 is not within the jurisdiction of any State.

31 (2) Whoever violates the provisions of paragraph (1) shall be
32 guilty of a Class E felony, except that the maximum fine shall be
33 \$10,000.

34 (3) Whoever, being (A) the owner of an American vessel, or (B)
35 the owner of any vessel under or within the jurisdiction of the United
36 States, or (C) the owner of any vessel and being an American citi-
37 zen, shall use, or knowingly permit the use of, such vessel in viola-
38 tion of any provision of this subsection shall, in addition to any other
39 penalties provided by this section, forfeit such vessel, together with
40 her tackle, apparel, and furniture, to the United States.

(d) (1) It shall be unlawful to operate or use, or to permit the operation or use of, a vessel for the carriage or transportation, or for any part of the carriage or transportation, either directly or indirectly, of any passengers, for hire or otherwise, between a point or place within the United States and a gambling ship which is not within the jurisdiction of any statement, certificate or report submitted pursuant to the provisions of the Federal-Aid Road Act, approved July 11, 1916 (39 Stat. 355), as amended and supplemented.

(2) Violation of this subsection is a Class E felony, except that the maximum fine shall be \$10,000.

SEC. 365. (a) This section may be cited as the "Miscellaneous Abandoned Passenger Crimes Act of 1973."

(b) Whoever, being master or commander of a vessel of the United States while abroad, knowingly forces any officers or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be guilty of a misdemeanor, except that the maximum fine shall be \$500.

SEC. 366. (a) This section may be cited as the "Miscellaneous Vessel Refuge Crimes Act of 1973."

(b) Whoever, being within the territorial waters of the United States, knowingly permits any vessel to be used as a place of resort for any person conspiring with another or preparing to commit any offense against the United States, or any offense in violation of the treaties of the United States or of the obligations of the United States under the law of nations, or to defraud the United States; or knowingly permits such vessel to be used in violation of the rights and obligations of the United States under the law of nations, shall be guilty of a Class E felony, except that the maximum fine shall be \$10,000.

(c) In case such vessels are so used, with the knowledge of the owner or master or other person in charge or command thereof, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws.

SEC. 367. (a) This section may be cited as the "Miscellaneous Dangerous Objects on Vessels Crimes Act of 1973."

1 (b) Whoever brings, carries, or possesses any dangerous weapon,
2 instrument, or device, or any dynamite, nitroglycerin, or other
3 explosive article or compound on board of any vessel registered,
4 enrolled, or licensed under the laws of the United States, or any
5 vessel purchased, requisitioned, chartered, or taken over by the United
6 States pursuant to the provisions of the Act of June 6, 1941, ch. 174,
7 55 Stat. 242, as amended, without previously obtaining the permis-
8 sion of the owner or the master of such vessel; or

9 Whoever brings, carries, or possesses any such weapon or explosive
10 on board of any vessel in the possession and under the control of the
11 United States or which has been seized and forfeited by the United
12 States or upon which a guard has been placed by the United States
13 pursuant to the provisions of the first section of the Act of June 15,
14 1917, as amended (50 U.S.C. 191), without previously obtaining
15 the permission of the captain of the port in which such vessel is
16 located, shall be guilty of a Class E felony.

17 (c) This section shall not apply to the personnel of the Armed
18 Forces of the United States or to officers or employees of the United
19 States or of a State or of a political subdivision thereof, while acting
20 in the performance of their duties who are authorized by law or by
21 rules or regulations to own or possess any such weapon or explosive.

22 SEC. 368. (a) This section may be cited as the "Miscellaneous Dan-
23 gerous Cargo Crimes Act of 1973."

24 (b) Whoever, being the master of a steamship or other vessel
25 referred to in the first section of the Passenger Act of 1882, as
26 amended (46 U.S.C. 151), except as otherwise expressly provided
27 by law, takes, carries, or has on board of any such vessel any nitro-
28 glycerin, dynamite, or any other explosive article or compound, or
29 any vitriol or like acids, or gunpowder, except for the ship's use, or
30 any article or number of articles, whether as a cargo or ballast, which,
31 by reason of the nature or quantity or mode of storage thereof, shall,
32 either singly or collectively, be likely to endanger the health or lives
33 of the passengers or the safety of the vessel, shall be guilty of a
34 Class E felony.

35 (c) The amount of any fine imposed upon the master of a steam-
36 ship or other vessel under the provisions of this section shall be a lien
37 upon such vessel, and such vessel may be libeled therefor in the district
38 court of the United States for any district in which such vessel shall
39 arrive or from which it shall depart.

PART NN—TITLE 47, U.S.C., AMENDMENTS

SEC. 369. (a) Section 5 of the Act of August 7, 1888 (47 U.S.C. 13), is amended by deleting “misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum of not exceeding one thousand dollars, and may be imprisoned not less than six months;” and inserting in lieu thereof “misdemeanor, except that the maximum fine shall be \$1,000;”.

(b) Sections 1 and 2 of the Act of February 29, 1888 (47 U.S.C. 21 and 22), are repealed.

(c) Section 3 of the Act of February 29, 1888 (47 U.S.C. 23), is amended to read as follows:

“SEC. 3. It shall be a defense to prosecution under section 2-8B5 or 2-8B6 of title 18, United States Code, or similar Federal criminal laws for breaking or injuring a submarine cable that the cable was broken or injured in an effort to save the life or limb of the actor or any other person, or to save his own or any other vessel, and that reasonable precautions were taken to avoid such breaking or injury.”.

(d) Section 4 of the Act of February 29, 1888 (47 U.S.C. 24), is amended by deleting “misdemeanor, and on conviction thereof, shall be liable to imprisonment for a term not exceeding one month, or to a fine of not exceeding five hundred dollars.” and inserting in lieu thereof “regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$500.”.

(e) Section 5 of the Act of February 29, 1888 (47 U.S.C. 25), is amended by deleting “misdemeanor, and on conviction thereof, shall be liable to imprisonment for a term not exceeding 10 days, or to a fine not exceeding \$250, or to both such fine and imprisonment, at the discretion of the court.” and inserting in lieu thereof “regulatory offense under section 2-8F6 of title 18, United States Code, except that the maximum fine shall be \$250.”

(f) Section 7 of the Act of February 29, 1888 (47 U.S.C. 27), is amended by deleting “or shall violently resist persons having authority according to article 10 of said convention to draw up statements of facts in the exercise of their functions, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to imprisonment not exceeding two years, or to a fine not exceeding \$5,000, or to both fine and imprisonment, at the discretion of the court.” and inserting in lieu thereof a comma and “shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.”.

(g) Section 9 of the Act of February 29, 1888 (47 U.S.C. 29), is amended to read as follows:

1 “SEC. 9. In a prosecution under section 2-8B5 or 2-8B6 of title 18,
2 United States Code, for breaking or injuring a submarine cable by
3 means of a vessel, or of any boat belonging to a vessel, the master of
4 such vessel shall be presumed to have been in charge of and navigating
5 such vessel or boat.”.

6 (h) Sections 11 and 13 of the Act of February 29, 1888 (47 U.S.C.
7 31, 33), are repealed.

8 (i) Section 4 of the Act of May 27, 1921 (47 U.S.C. 37), is amended
9 to read as follows:

10 “SEC. 4. Whoever knowingly commits any act forbidden by section 1
11 of this Act shall be guilty of a Class E felony, except that the maxi-
12 mum fine shall be \$5,000.”.

13 (j) Section 202(c) of the Communications Act of 1934 (47 U.S.C.
14 202 (c)) is amended by deleting the word “offense” wherever it
15 appears therein and inserting in lieu thereof “violation”.

16 (k) Section 203(e) of the Communications Act of 1934 (47 U.S.C.
17 203 (e)) is amended by deleting the word “offense” where it ap-
18 pears therein and inserting in lieu thereof “violation”.

19 (l) Section 205(b) of the Communications Act of 1934 (47 Stat.
20 205 (b)) is amended by deleting the word “offense” wherever it ap-
21 pears therein and inserting in lieu thereof “violation”.

22 (m) Section 220 of the Communications Act of 1934 (47 U.S.C.
23 220) is amended (1) by inserting immediately before the period at
24 the end thereof, a comma and “all of which shall be subject to the
25 provisions of section 2-6D3 of title 18, United States Code”; (2) by
26 deleting in subsection (d) thereof the word “offense” and inserting in
27 lieu thereof “violation”; and (3) by amending subsection (e) thereof
28 to read as follows:

29 “(e) Any person who shall knowingly neglect or fail to make full,
30 true, and correct entries in such accounts, records, or memoranda of all
31 facts and transactions appertaining to the business of the carrier, shall
32 be guilty of a Class E felony, except that the minimum fine
33 shall be \$1,000 and the maximum fine shall be \$5,000: *Provided*, That
34 the Commission may, in its discretion, issue orders specifying such
35 operating, accounting, or financial papers, records, books, blanks, or
36 documents which may, after a reasonable time, be destroyed, and pre-
37 scribing the length of time such books, papers, or documents shall be
38 preserved.”.

39 (n) Section 312 of the Communications Act of 1934 (47 U.S.C. 312)
40 is amended (1) by deleting in clause (6) of subsection (a) “section

1 1304, 1343, or 1464” and inserting in lieu thereof “section 2-9F2, 2-8D5,
2 or 2-9F5”; and (2) by deleting in subsection (b) “section 1304, 1343, or
3 1464” and inserting in lieu thereof “section 2-9F2, 2-8D5, or 2-9F5”.

4 (o) Section 364(a) of the Communications Act of 1934 (47 U.S.C.
5 362) is amended by deleting the word “offense” and inserting in lieu
6 thereof “violation”.

7 (p) Section 386(a) of the Communications Act of 1934 (47 U.S.C.
8 386) is amended by deleting “offense” and inserting in lieu thereof
9 “violation”.

10 (q)(1) Section 409(e) of the Communications Act of 1934 (47
11 U.S.C. 409(e)) is amended by adding at the end thereof the follow-
12 ing: “The provisions of section 2-6C2 of title 18, United States Code,
13 shall be applicable with respect to any subpoena issued pursuant to
14 this section.”

15 (2) Section 409(m) of the Communications Act of 1934 (47 U.S.C.
16 409(m)) is repealed.

17 (r) Section 503(b)(1) of the Communications Act of 1934 (47
18 U.S.C. 501) is amended to read as follows:

19 “SEC. 501. Any person who knowingly does any act, matter, or thing,
20 in this Act prohibited or declared to be unlawful, or who knowingly
21 omits or fails to do any act, matter, or thing in this Act required to be
22 done, shall, for any offense for which no penalty (other than a for-
23 feiture) is provided in this Act, be guilty of a Class E felony, except
24 that the maximum fine shall be \$10,000.”

25 (s) Section 502 of the Communications Act of 1934 (47 U.S.C. 502)
26 is amended (1) by deleting “willfully and”; and (2) by deleting
27 “punished, upon conviction thereof, by a fine of not more than \$500
28 for each and every day during which such offense occurs.” and insert-
29 ing in lieu thereof “guilty of a regulatory offense under section 2-8F6
30 of title 18, United States Code, except that the maximum fine shall be
31 \$500 for each and every day during which such offense occurs.”.

32 (t) Section 503(b)(1) of the Communications Act of 1934 (47
33 U.S.C. 503) is amended (1) by deleting “1304, 1343, or 1464” and in-
34 serting “1-2A4, 2-8D3, or 2-9F5”; and (2) by deleting “offense” and
35 inserting “violation”.

36 (u)(1) Section 506(a) of the Communications Act of 1934 (47
37 U.S.C. 506) is amended by deleting “or attempt to coerce, compel, or
38 constrain”.

39 (2) Section 506(b) of the Communications Act of 1934 (47 U.S.C.
40 506) is amended by deleting “or attempt to coerce, compel, or con-
41 strain”.

1 (v) Section 508(g) of the Communications Act of 1934 (47 U.S.C.
2 508) is amended by deleting "fined not more than \$10,000 or imprisoned
3 not more than one year, or both." and inserting in lieu thereof "guilty
4 of a Class E felony, except that the maximum fine shall be \$10,000."

5 (w) (1) Section 509(a) (4) of the Communications Act of 1934 (47
6 U.S.C. 509) is amended by deleting "or having reasonable ground for
7 believing".

8 (2) Section 509(a) (5) of the Communications Act of 1934 (47
9 U.S.C. 509) is repealed.

10 (x) Section 605 of the Communications Act of 1934 (47 U.S.C. 605)
11 is amended by deleting "chapter 119, title 18," and inserting in lieu
12 thereof "sections 2-7G1 and 2-7G2, and subchapter C of chapter 10, of
13 title 18,".

14 (y) (1) Section 606(b) of the Communications Act of 1934 (47
15 U.S.C. 606) is amended (1) by deleting the first sentence thereof; and
16 (2) by deleting "any such obstruction or retardation of communica-
17 tion" and inserting ", during any war in which the United States is
18 engaged, any obstruction or retardation of a communication in viola-
19 tion of section 2-5B4, 2-8B5, or 2-8B6 of title 18, United States Code".

20 (2) Section 606(h) of the Communications Act of 1934 (47 U.S.C.
21 606) is amended (1) by deleting "willfully does or causes or suffers
22 to be done" and inserting in lieu thereof "knowingly does"; (2) by
23 deleting "willfully fails" and inserting "knowingly fails"; (3) by
24 deleting "or who willfully causes or suffers such failure,"; (4) by
25 deleting "punished for such offense by a fine of not more than \$1,000
26 or by imprisonment for not more than one year, or both," and inserting
27 "guilty of a Class E felony,"; and (5) by deleting ", except that any
28 person who commits such an offense with intent to injure the United
29 States, or with intent to secure an advantage to any foreign nation,
30 shall, upon conviction thereof, be punished by a fine of not more than
31 \$20,000 or by imprisonment for not more than 20 years, or both".

32 SEC. 370. (a) The Communications Act of 1934 (47 U.S.C. 151) is
33 amended by adding immediately after section 605 thereof the follow-
34 ing new section:

35 "SEC. 605A. It shall not be unlawful under this Act for an officer,
36 employee, or agent of the Federal Communications Commission, in the
37 normal course of his employment and in discharge of the monitoring
38 responsibilities exercised by the Commission in the enforcement of this
39 Act, to intercept an oral communication transmitted by radio, or to
40 disclose or use the information thereby obtained."

(b) Nothing contained in section 2-7G2 of title 18, United States Code, or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605) limits the constitutional power of the President to take such measures as he deems necessary to protect the nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nothing contained in such sections limits the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the government.

“(c) Section 106 of the Campaign Communications Reform Act (47 U.S.C.) is amended to read as follows:

“PENALTIES

“SEC. 106. Whoever knowingly violates any provision of section 103(b), 104(a), or 104(b), or any regulation under section 105 shall be guilty of a Class E felony, except that the maximum fine shall be \$100,000.”

PART OO—TITLE 48, U.S.C., AMENDMENTS

SEC. 371. (a) Section 5576 of the Revised Statutes is repealed.

(b) (1) Section 31(d)(1) of the Act of August 1, 1950 (64 Stat. 392), is amended by inserting immediately after “1954” the first time it appears “and sections 2-6G1 and 2-6G2 of title 18, United States Code”.

(2) Subsection (f) of section 31 of such Act is amended by inserting immediately after “1954” “and sections 2-6G1 and 2-6G2 of title 18, United States Code”.

(3) Section 31(h) of such Act is amended by striking “fines” wherever it appears.

(c) Section 16 of the Act of August 1, 1950 (64 Stat. 388), is amended to read as follows: “No person shall sit in the legislature who is not a citizen of the United States, who has not attained the age of 25 years, who has not been domiciled in Guam for at least five years immediately preceding the seating of the legislature in which he seeks to qualify as a member, or who has been sentenced under section 1-4A3 of title 18, United States Code.”

(d) Section 8 of the Act of March 22, 1882 (22 Stat. 31), is repealed.

(e) Section 6(b) of the Act of July 22, 1954 (68 Stat. 499), is

1 amended to read as follows: "No person shall be eligible to be a mem-
2 ber of the legislature who is not a citizen of the United States, who has
3 not attained the age of 25 years, who is not a qualified voter in the
4 Virgin Islands, who has not been a bona fide resident of the Virgin
5 Islands for at least three years next preceding the date of his election,
6 or who has been sentenced under section 1-4A3 of title 18, United
7 States Code."

8 (f) Section 4(a) of the Act of November 20, 1963 (77 Stat. 339),
9 is amended by striking the second sentence.

10 **PART PP—TITLE 49, U.S.C., AMENDMENTS**

11 **SEC. 372.** (a) (1) Section 1(7) of the Interstate Commerce Act
12 (49 U.S.C. 1) is amended by deleting "a misdemeanor, and for each
13 offense, on conviction, shall pay to the United States a penalty of not
14 less than one hundred dollars nor more than two thousand dollars,"
15 and inserting in lieu thereof "a violation, except that the minimum
16 fine shall be \$100 and the maximum fine shall be \$2,000,".

17 (2) Section 1(12) of the Interstate Commerce Act (49 U.S.C. 1)
18 is amended by deleting "offense" wherever it appears therein and
19 inserting in lieu thereof "violation".

20 (3) Section 1(17) (a) of the Interstate Commerce Act (49 U.S.C. 1)
21 is amended by deleting "offense" wherever it appears therein and
22 inserting "violation".

23 (4) Section 1(17) (b) of the Interstate Commerce Act (49 U.S.C. 1)
24 is repealed.

25 (b) (1) Section 5(1) of the Interstate Commerce Act (49 U.S.C. 5)
26 is amended by deleting "offense" and inserting "violation".

27 (2) Section 5(14) of the Interstate Commerce Act (49 U.S.C. 5)
28 is amended by deleting "offense" and inserting "violation".

29 (c) Section 6(10) of the Interstate Commerce Act (49 U.S.C. 6) is
30 amended by deleting "offense" wherever it appears therein and insert-
31 ing "violation".

32 (d) (1) Section 10(1) of the Interstate Commerce Act (49 U.S.C.
33 10) is amended to read as follows:

34 "(1) (a) Except as provided in paragraph (b) of this subsection, a
35 person who does anything prohibited or declared to be unlawful under
36 this part or who knowingly fails to do anything required by this
37 part or who violates a provision of this part for which no penalty
38 is otherwise provided shall be guilty of a regulatory offense under sec-
39 tion 2-8F6 of title 18, United States Code, except that the maximum
40 fine shall be \$5,000.

1 “(b) A person is guilty of a Class E felony, but with a maximum
2 fine limit of \$5,000, if he knowingly discriminates in rates, fares or
3 charges for the transportation of passengers or property or the trans-
4 mission of intelligence in violation of a provision of this part.”.

5 (2) Section 10(2) of the Interstate Commerce Act (49 U.S.C. 10)
6 is amended (1) by deleting “or, wherever such common carrier is a
7 corporation, any officer or agent thereof, or any person acting for or
8 employed by such corporation,”; (2) by deleting “and willfully”; and
9 (3) by deleting “misdemeanor, and shall, upon conviction thereof in
10 any court of the United States of competent jurisdiction within the
11 district in which such offense was committed, be subject to a fine of
12 not exceeding five thousand dollars, or imprisonment in the peniten-
13 tiary for a term of not exceeding two years, or both, in the discretion
14 of the court, for each offense.” and inserting “Class E felony, except
15 that the maximum fine shall be \$5,000.”

16 (3) Section 10(3) of the Interstate Commerce Act (49 U.S.C. 10)
17 is amended (1) by deleting “and willfully” wherever it appears there-
18 in; and (2) by deleting “misdemeanor, and shall, upon conviction
19 thereof in any court of the United States of competent jurisdiction
20 within the district in which such offense was wholly or in part com-
21 mitted, be subject for each offense to a fine of not exceeding five thou-
22 sand dollars, or imprisonment in the penitentiary for a term of not
23 exceeding two years, or both, in the discretion of the court:” and in-
24 serting “Class E felony, except that the maximum fine shall be \$5,000:”.

25 (4) Section 10(4) of the Interstate Commerce Act (49 U.S.C. 10)
26 is amended by deleting “misdemeanor, and shall, upon conviction
27 thereof in any court of the United States of competent jurisdiction
28 within the district in which such offense was committed, be subject to
29 a fine of not exceeding five thousand dollars, or imprisonment in the
30 penitentiary for a term of not exceeding two years, or both, in the
31 discretion of the court, for each such offense;” and inserting “Class E
32 felony, except that the maximum fine shall be \$5,000;”.

33 (e) Section 15(12) of the Interstate Commerce Act (49 U.S.C. 15)
34 is amended by deleting “a misdemeanor, and for each offense, on con-
35 viction, shall pay to the United States a penalty of not more than one
36 thousand dollars.” and inserting “a violation, except that the maxi-
37 mum fine shall be \$1,000.”.

38 (f) Section 16(8) of the Interstate Commerce Act (49 U.S.C. 16)
39 is amended by deleting “offense” wherever it appears therein and in-
40 serting in lieu thereof “violation”.

1 (g) Section 19a(k) of the Interstate Commerce Act (49 U.S.C.
2 19a) is amended by deleting "offense" wherever it appears therein and
3 inserting in lieu thereof "violation".

4 (h) (1) Section 20(7)(a) of the Interstate Commerce Act (49
5 U.S.C. 20) is amended by deleting "offense" and inserting in lieu
6 thereof "violation".

7 (2) Section 20(7)(b) of the Interstate Commerce Act (49 U.S.C.
8 20) is amended to read as follows:

9 "(b) The provisions of section 2-6D3 of title 18, United States Code,
10 shall be applicable with respect to all accounts, records, and memo-
11 randa required to be kept by this section. Any person who shall know-
12 ingly keep any accounts, records, or memoranda contrary to the rules,
13 regulations, or orders of the Commission with respect thereto shall be
14 guilty of a Class E felony, except that the maximum fine shall be
15 \$5,000: *Provided*, That the Commission may in its discretion issue
16 orders specifying such operating, accounting, or financial papers,
17 records, books, blanks, tickets, stubs, correspondence, or documents of
18 such carriers, lessors, or other persons as may, after a reasonable time,
19 be destroyed, and prescribing the length of time the same shall be
20 preserved."

21 (3) Section 20(7)(f) of the Interstate Commerce Act (49 U.S.C.
22 20) is amended (1) by deleting "and willfully"; and (2) by deleting
23 "misdemeanor and shall be subject, upon conviction in any court of
24 the United States of competent jurisdiction, to a fine of not more than
25 five hundred dollars, or imprisonment for not exceeding six months,
26 or both." and inserting in lieu thereof "misdemeanor, except that the
27 maximum fine shall be \$500."

28 (i) (1) Section 20a(11) of the Interstate Commerce Act (49 U.S.C.
29 20a) is amended by deleting "misdemeanor and upon conviction shall
30 be punished by a fine of not less than one thousand dollars nor more
31 than ten thousand dollars, or by imprisonment for not less than one
32 year nor more than three years, or by both such fine and imprison-
33 ment, in the discretion of the court." and inserting in lieu thereof
34 "Class E felony, except that the minimum fine shall be \$1,000 and the
35 maximum fine shall be \$10,000."

36 (2) The last sentence of section 20a(12) of the Interstate Com-
37 merce Act (49 U.S.C. 20a) is amended to read as follows: "Any viola-
38 tion of these provisions shall be a Class E felony, except that the
39 minimum fine shall be \$1,000 and the maximum fine shall be \$10,000."

40 (j) Section 1 of the Act of February 19, 1903 (49 U.S.C. 41), is

1 amended (1) by deleting the first sentence thereof; (2) by deleting
2 “The willful failure” and inserting “The failure, with knowledge,”;
3 (3) by deleting the word “misdemeanor” wherever it appears therein,
4 and inserting in lieu thereof the words “Class E felony”; and (4) by
5 deleting “two years,” and inserting in lieu thereof “one year.”

6 (k) The Act of February 11, 1893 (49 U.S.C. 46), is amended by
7 deleting “shall be guilty of an offense and upon conviction thereof by
8 a court of competent jurisdiction shall be punished by fine not less than
9 one hundred dollars nor more than five thousand dollars, or by im-
10 prisonment for not more than one year or by both such fine and im-
11 prisonment.” and inserting “subject to the provisions of section 2-6C2
12 of title 18, United States Code, and the Commission shall be deemed
13 an ‘authorized agency’ within the meaning of that term as set forth
14 therein.”.

15 (l) Section 41 of the Act of August 29, 1916 (49 U.S.C. 121) is
16 amended by deleting “misdemeanor, and, upon conviction, shall be
17 punished for each offense by imprisonment not exceeding five years,
18 or by a fine not exceeding \$5,000, or both.” and inserting “Class E
19 felony, except that the maximum fine shall be \$5,000.”.

20 (m) (1) Section 222(a) of the Interstate Commerce Act (49 U.S.C.
21 322) is amended (1) by deleting “and willfully”; and (2) by deleting
22 “fined not less than \$100 nor more than \$500 for the first offense and
23 not less than \$200 nor more than \$500 for any subsequent offense.”
24 and inserting “guilty of a regulatory offense under section 2-8F6 of
25 title 18, United States Code, except that, for the first offense, the
26 minimum fine shall be \$100 and the maximum fine shall be \$500, and
27 for any subsequent offense, the minimum fine shall be \$200 and the
28 maximum fine shall be \$500.”.

29 (2) Section 222(c) of the Interstate Commerce Act (49 U.S.C.
30 322) is amended (1) by deleting “and willfully” wherever it appears
31 therein and (2) by deleting “misdemeanor and upon conviction thereof
32 be fined not less than \$200 nor more than \$500 for the first offense
33 and not less than \$250 nor more than \$2,000 for any subsequent of-
34 fense.” and inserting “regulatory offense under section 2-8F6 of
35 title 18, United States Code, except that, for the first offense, the
36 minimum fine shall be \$200 and the maximum fine shall be \$500, and
37 for any subsequent offense, the minimum fine shall be \$250 and the
38 maximum fine shall be \$2,000.”.

39 (3) Section 222(d) of the Interstate Commerce Act (49 U.S.C.
40 322) is amended (1) by deleting “and willfully”; and (2) by deleting

1 “misdemeanor and shall be subject, upon conviction in any court of the
2 United States of competent jurisdiction, to a fine of not more than
3 \$500 or imprisonment for not more than \$500 or imprisonment for not
4 exceeding six months, or both.” and inserting “misdemeanor, except
5 that the maximum fine shall be \$500.”.

6 (4) Section 222(g) of the Interstate Commerce Act (49 U.S.C. 322)
7 is amended (1) by deleting “willfully fail” and inserting “knowingly
8 fail”; (2) by deleting “or shall knowingly and willfully falsify, de-
9 stroy, mutilate, or alter any such report, account, record, or memoran-
10 dum, or shall knowingly and willfully file with the Commission any
11 false report, account, record, or memorandum, or shall knowingly
12 and willfully neglect or fail to make full, true, and correct entries
13 in such accounts, records, or memoranda of all facts and transactions
14 appertaining to the business of the carrier, or person required under
15 this part to keep the same,”; (3) by deleting “ and willfully keep”
16 and inserting “keep”; (4) by deleting “a misdemeanor and upon
17 conviction thereof be subject for each offense to a fine of not more
18 than \$5,000.” and inserting “a violation, except that the maximum fine
19 shall be \$5,000.” and (5) by adding at the end thereof the following
20 new sentence: “The provisions of section 2-6D3 of title 18, United
21 States Code, shall be applicable with respect to such reports, accounts,
22 records, and memoranda.”

23 (5) Section 222(h) of the Interstate Commerce Act (49 U.S.C. 322)
24 is amended (1) by deleting “offense” wherever it appears therein and
25 inserting “violation”; and (2) by deleting “offender” wherever it
26 appears therein and inserting “violator”.

27 (n) (1) Section 317(a) of the Interstate Commerce Act (49 U.S.C.
28 917) is amended (1) by deleting “and willfully”; and (2) by delet-
29 ing “misdemeanor and upon conviction thereof in any court of the
30 United States of competent jurisdiction in the district in which such
31 offense was in whole or in part committed shall be subject for each
32 offense to a fine not exceeding \$500.” and inserting “regulatory offense
33 under section 2-8F6 of title 18, United States Code, except that the
34 maximum fine shall be \$500.”.

35 (2) Section 317(b) of the Interstate Commerce Act (49 U.S.C. 917)
36 is amended (1) by deleting “and willfully” wherever it appears
37 therein; and (2) by deleting “a misdemeanor and upon conviction
38 thereof in any court of the United States of competent jurisdiction
39 within the district in which such offense was wholly or in part com-
40 mitted shall be subject for each offense to a fine of not more than

1 \$5,000,” and inserting “a violation, except that the maximum fine shall
2 be \$5,000.”.

3 (3) Section 317(c) of the Interstate Commerce Act (49 U.S.C. 917)
4 is amended (1) by deleting “and willfully” wherever it appears there-
5 in; and (2) by deleting “a misdemeanor and upon conviction thereof
6 in any court of the United States of competent jurisdiction within the
7 district in which such offense was in whole or in part committed, be
8 subjected for each offense to a fine of not more than \$5,000.” and
9 inserting “a violation, except that the maximum fine shall be \$5,000.”.

10 (4) Section 317(d) of the Interstate Commerce Act (49 U.S.C. 917)
11 is amended (1) by deleting “willfully fail” and inserting “knowingly
12 fail”; (2) by deleting “or shall willfully falsify, destroy, mutilate,
13 or alter any report, account, record, memorandum, book, correspond-
14 ence, or other document, required under this part to be kept, or who
15 shall willfully neglect or fail to make full, true and correct entries in
16 such accounts, records, or memoranda of all facts and transactions as
17 required under this part,”; (3) by deleting “willfully keep” and insert-
18 ing “knowingly keep”; (4) by deleting “or shall knowingly and will-
19 fully file with the Commission any false report, account, record, or
20 memorandum,”; (5) by deleting “a misdemeanor, and upon conviction
21 thereof in any court of the United States of competent jurisdiction
22 within the district in which such offense was in whole or in part com-
23 mitted, be subject for each offense to a fine of not more than \$5,000.”
24 and inserting “a violation, except that the maximum fine shall be
25 \$5,000.”; and (6) by adding at the end thereof the following new sen-
26 tence: “The provisions of section 2-6D3 of title 18, United States Code,
27 shall be applicable with respect to such reports, accounts, records, and
28 memoranda.”.

29 (5) Section 317(e) of the Interstate Commerce Act (49 U.S.C. 917)
30 is amended (1) by deleting “and willfully”; and (2) by deleting “mis-
31 demeanor and shall be subject, upon conviction in any court of the
32 United States of competent jurisdiction, to a fine of not more than
33 \$500 or imprisonment for a term not exceeding six months, or both.”
34 and inserting “misdemeanor, except that the maximum fine shall be
35 \$500.”.

36 (6) Section 317(f) of the Interstate Commerce Act (49 U.S.C. 917)
37 is amended (1) by deleting “and willfully” wherever it appears
38 therein; and (2) by deleting “a misdemeanor and upon conviction
39 thereof in any court of the United States of competent jurisdiction
40 within the district in which such offense was in whole or in part com-

mitted shall be subject to a fine of not more than \$2,000.” and inserting
“a violation, except that the maximum fine shall be \$2,000.”

(o) (1) Section 421(a) of the Interstate Commerce Act (49 U.S.C. 1021) is amended (1) by deleting “and willfully”; and (2) by deleting “misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$100 for the first offense and not more than \$500 for any subsequent offense.” and inserting “regulatory offense under section 2-8F6 of title 18, United States Code, except that, for the first offense, the maximum fine shall be \$100 and, for any subsequent offense, the maximum fine shall be \$500.”.

(2) Section 421 (b) of the Interstate Commerce Act (49 U.S.C. 1021) is amended (1) by deleting “and willfully”; and (2) by deleting “a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense.” and inserting “a violation, except that, for the first offense, the maximum fine shall be \$500 and, for any subsequent offense, the maximum fine shall be \$2,000.”.

(3) Section 421 (c) of the Interstate Commerce Act (49 U.S.C. 1021) is amended (1) by deleting “and willfully” wherever it appears therein; and (2) by deleting “a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense.” and inserting “a violation, except that, for the first offense, the maximum fine shall be \$500 and, for any subsequent offense, the maximum fine shall be \$2,000.”.

(4) Section 421(d) of the Interstate Commerce Act (49 U.S.C. 1021) is amended (1) by deleting “willfully fail” and inserting “knowingly fail”; (2) by deleting “or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file with the Commission any false report, account, record, or memorandum, or shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the freight forwarder,”; (3) by deleting “willfully keep” and inserting “keep”; (4) by deleting “a misdemeanor and upon conviction thereof shall be subject for each offense to a fine of not more than \$5,000.” and inserting “a violation, except that the maximum fine shall be \$5,000.” and (5) by adding at the end thereof the following new sentence: “The provisions of section 2-6D3

1 of title 18, United States Code, shall be applicable with respect to such
2 reports, accounts, records, and memoranda.”.

3 (5) Section 421 (e) of the Interstate Commerce Act (49 U.S.C.
4 1021) is amended (1) by deleting “and willfully”; and (2) by deleting
5 “a misdemeanor, and upon conviction thereof shall be subject to a fine
6 of not more than \$500 or imprisonment for not exceeding six months,
7 or both.” and inserting “a misdemeanor, except that the maximum fine
8 shall be \$500.”.

9 (6) Section 421(f) of the Interstate Commerce Act (49 U.S.C.
10 1021) is amended (1) by deleting “and willfully” wherever it appears
11 therein; and (2) by deleting “a misdemeanor and upon conviction
12 thereof shall be subject to a fine of not more than \$100 for the first
13 offense and not more than \$500 for any subsequent offense.” and insert-
14 ing “a violation, except that, for the first offense, the maximum fine
15 shall be \$100 and, for any subsequent offense, the maximum fine shall
16 be \$500.”.

17 (p) Section 10(a) of the International Aviation Facilities Act (49
18 U.S.C. 1159) is amended (1) by deleting “and willfully”; and (2) by
19 deleting “misdemeanor and upon conviction thereof shall be subject to
20 a fine of not more than \$500 or to imprisonment not exceeding six
21 months, or to both such fine and imprisonment.” and inserting “regu-
22 latory offense under section 2-8F6 of title 18, United States Code, ex-
23 cept that the maximum fine shall be \$500.”.

24 (q) Section 901(a)(1) of the Federal Aviation Act of 1958 (49
25 U.S.C. 1471) is amended by deleting “offense” and inserting in lieu
26 thereof “violation”.

27 (r)(1) Section 902(a) of the Federal Aviation Act of 1958 (49
28 U.S.C. 1472) is amended (1) by deleting “and willfully”; and (2) by
29 deleting “misdemeanor and upon conviction thereof shall be subject
30 for the first offense to a fine of not more than \$500, and for any subse-
31 quent offense to a fine of not more than \$2,000.” and inserting “regu-
32 latory offense under section 2-8F6 of title 18, United States Code,
33 except that, for the first offense, the maximum fine shall be \$500 and,
34 for any subsequent offense, the maximum fine shall be \$2,000.”.

35 (2) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C.
36 1472) is amended (1) by deleting “and willfully forges, counterfeits,
37 alters, or falsely makes any certificate authorized to be issued under
38 this Act, or knowingly uses or attempts to use any such fraudulent
39 certificate, and any person who knowingly and willfully”; and (2) by
40 deleting “subject to a fine of not exceeding \$1,000 or to imprisonment
41 not exceeding three years, or to both such fine and imprisonment.” and

1 inserting "guilty of a Class E felony, except that the maximum fine
2 shall be \$1,000."

3 (3) Section 902(c) of the Federal Aviation Act of 1958 (49 U.S.C.
4 1472) is amended by deleting "A person shall be subject to a fine of
5 not exceeding \$5,000 or to imprisonment not exceeding five years, or
6 to both such fine and imprisonment, who—" and inserting "A person
7 shall be guilty of a Class E felony, subject to a maximum fine of
8 \$5,000, who—".

9 (4) Section 902(d) of the Federal Aviation Act of 1958 (49 U.S.C.
10 1472) is amended (1) by deleting "and willfully" wherever it appears
11 therein; and (2) by deleting "a misdemeanor and, upon conviction
12 thereof, shall be subject for each offense to a fine of not less than \$100
13 and not more than \$5,000." and inserting "a violation, except that the
14 minimum fine shall be \$100 and the maximum fine shall be \$5,000."

15 (5) Section 902(e) of the Federal Aviation Act of 1958 (49 U.S.C.
16 1472) is amended to read as follows:

17 "(e) Any air carrier, or any officer, agent, employee, or representa-
18 tive thereof, who shall knowingly fail or refuse to make a report to the
19 Board or Administrator as required by this Act, or to keep or pre-
20 serve accounts, records, and memorandum in the form and manner
21 prescribed or approved by the Board or Administrator, shall be
22 deemed guilty of a violation, except that the minimum fine shall be
23 \$100 and the maximum fine shall be \$5,000. The provisions of section
24 2-6D3 of title 18, United States Code, shall be applicable with re-
25 spect to such reports, accounts, records, and memoranda."

26 (6) Section 902(f) of the Federal Aviation Act of 1958 (49 U.S.C.
27 1472) is amended (1) by deleting "and willfully"; and (2) by deleting
28 "upon conviction thereof be subject for each offense to a fine of not
29 more than \$5,000 or imprisonment for not more than two years, or
30 both:" and inserting "be guilty of a Class E felony, except that the
31 maximum fine shall be \$5,000:".

32 (7) Section 902(g) of the Federal Aviation Act of 1958 (49 U.S.C.
33 1472) is amended to read as follows:

34 "(g) Any person who shall neglect or refuse to attend and testify, or
35 to answer any lawful inquiry, or to produce books, papers, or docu-
36 ments, if in his power to do so, in obedience to the subpoena or lawful
37 requirement of the Board or Administrator shall be subject to the
38 provisions of section 2-6C2 of title 18, United States Code, and the
39 Board shall be deemed an 'authorized agency' within the meaning of
40 that term as set forth therein."

1 (8) Section 902(h)(1) of the Federal Aviation Act of 1958 (49
2 U.S.C. 1472), is amended by deleting, beginning with the word “shall”
3 everything through the period at the end thereof and inserting “shall
4 be guilty of a Class E felony.”.

5 (9) Subsections (i), (j) and (k) of section 902 of the Federal
6 Aviation Act of 1958 (49 U.S.C. 1472) are repealed.

7 (10) Section 902(l) of the Federal Aviation Act of 1958 (49 U.S.C.
8 1472) is amended by deleting “fined not more than \$1,000 or im-
9 prisoned not more than one year, or both.” and inserting “deemed
10 guilty of a Class E felony.”.

11 (11) Section 902(m)(1) of the Federal Aviation Act of 1958 (49
12 U.S.C. 1472) is amended by deleting “subsection (i), (j), (k), or (l)
13 of this section, shall be fined not more than \$1,000 or imprisoned not
14 more than one year, or both.” and inserting “section 2-7D4 of title
15 18, United States Code, and subsection (l) of this section, shall be
16 deemed guilty of a Class E felony.”.

17 (12) Section 902(m)(2) of the Federal Aviation Act of 1958 (49
18 U.S.C. 1472) is repealed.

19 (13) Section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C.
20 1472) is amended by deleting “subsections (i) through (m) inclusive,
21 of this section” and inserting “section 2-7D4 of title 18, United States
22 Code, and subsections (l) and (m) of this section”.

23 (14) Section 902(o) of the Federal Aviation Act of 1958 (49 U.S.C.
24 1472) is amended by deleting “subject to a fine of no less than \$100
25 nor more than \$5,000, or imprisonment for not more than one year, or
26 both.” and inserting “guilty of a Class E felony, except that the
27 minimum fine shall be \$100 and the maximum fine of \$5,000.”.

28 (s) Section 1203 of the Federal Aviation Act of 1958 (49 U.S.C.
29 1523) is amended (1) by deleting “or willfully”; and (2) by deleting
30 “misdemeanor, and upon conviction thereof, shall be subject to a fine
31 of not exceeding \$10,000 or to imprisonment not exceeding one year,
32 or to both such fine and imprisonment.” and inserting “regulatory
33 offense under section 2-8F6 of title 18, United States Code, except that
34 the maximum fine shall be \$10,000.”.

35 (t)(1) Section 12(a) of the Natural Gas Pipeline Safety Act of
36 1968 (49 U.S.C. 1681) is amended by adding at the end thereof the
37 following new sentence: “The provisions of section 2-6D3 of title 18,
38 United States Code, shall be applicable with respect to such books,
39 papers, records and documents.”.

1 (2) Section 12(d) of the Natural Gas Pipeline Safety Act of 1968
2 (49 U.S.C. 1681) is amended by deleting “referred to in section 1905
3 of title 18 of the United States Code, shall be considered confidential
4 for the purpose of that section,” and inserting “shall be considered
5 ‘confidential’ within the meaning of that term as used in section
6 2-6F1 of title 18, United States Code, and any disclosure thereof
7 shall be subject to the provisions of such section,”.

8 (u) Section 25 of the Airport and Airway Development Act of
9 1970 (49 U.S.C. 1725) is repealed.

10 SEC. 373. (a) This section may be cited as the “Miscellaneous Explo-
11 sives and Other Dangerous Articles Crimes Act of 1973”.

12 (b) As used in this section unless otherwise indicated—

13 (1) “Carrier” means any person engaged in the transportation of
14 passengers or property by land, as a common, contract, or private car-
15 rier, or freight forwarder as those terms are used in the Interstate
16 Commerce Act, as amended, and officers, agents, and employees of such
17 carriers.

18 (2) “Person” means any individual, firm, copartnership, corporation,
19 company, association, or joint-stock association, and includes any
20 trustee, receiver, assignee, or personal representative thereof.

21 (3) “For-hire carrier” includes common and contract carriers.

22 (4) “Shipper” includes officers, agents, and employees of shippers.

23 (5) “Interstate and foreign commerce” means commerce between a
24 point in one State and a point in another State, between points in the
25 same State through another State or through a foreign country, be-
26 tween points in a foreign country or countries through the United
27 States, and commerce between a point in the United States and a point
28 in a foreign country or in a Territory or possession of the United
29 States, but only insofar as such commerce takes place in the United
30 States. The term “United States” means all the States and the District
31 of Columbia.

32 (6) “State” include the District of Columbia.

33 (7) “Detonating fuzes” means fuzes used in military service to
34 detonate the explosive charges of military projectiles, mines, bombs, or
35 torpedoes.

36 (8) “Fuzes” means devices used in igniting the explosive charges of
37 projectiles.

38 (9) “Fuses” means the slow-burning fuses used commercially to con-
39 vey fire to an explosive combustible mass.

40 (10) “Fusees” means the fusees ordinarily used on steamboats, rail-
41 roads, and motor carriers as night signals.

1 (11) "Radioactive materials" means any materials or combination of
2 materials that spontaneously emit ionizing radiation.

3 (12) "Etiologic agents" means the causative agent of such diseases
4 as may from time to time be listed in regulations governing etiologic
5 agents prescribed by the Department of Transportation under subsec-
6 tion (e) of this section.

7 (c) (1) Any person who knowingly transports, carries, or conveys
8 within the United States, any dangerous explosives, such as and includ-
9 ing, dynamite, blasting caps, detonating fuzes, black powder, gunpow-
10 der, or other like explosive, or any radioactive materials, or etiologic
11 agents, on or in any passenger car or passenger vehicle of any
12 description operated in the transportation of passengers by any for-
13 hire carrier engaged in interstate or foreign commerce, by land, shall
14 be guilty of a Class E felony: *Provided, however,* That such explosives,
15 radioactive materials, or etiologic agents may be transported on or in
16 such car or vehicle whenever the Department of Transportation finds
17 that an emergency requires an expedited movement, in which case such
18 emergency movements shall be made subject to such regulations as the
19 Department may deem necessary or desirable in the public interest in
20 each instance: *Provided further,* That under this section it shall be
21 lawful to transport on or in any such car or vehicle, small quantities of
22 explosives, radioactive materials, etiologic agents, or other dangerous
23 commodities of the kinds, in such amounts, and under such conditions
24 as may be determined by the Department of Transportation to involve
25 no appreciable danger to persons or property: *And provided further,*
26 That it shall be lawful to transport on or in any such car or vehicle
27 such fusees, torpedoes, rockets, or other signal devices as may be essen-
28 tial to promote safety in the operation of any such car or vehicle on
29 or in which transported. This subsection shall not prevent the trans-
30 portation of military forces with their accompanying munitions of
31 war on passenger-equipment cars or vehicles.

32 (2) (i) No person shall knowingly transport, carry, or convey within
33 the United States liquid nitroglycerin, fulminate in bulk in dry con-
34 dition, or other similarly dangerous explosives, or radioactive mate-
35 rials, or etiologic agents, on or in any car or vehicle of any description
36 operated in the transportation of passengers or property by any car-
37 rier engaged in interstate or foreign commerce, by land, except under
38 such rules and regulations as the Department of Transportation shall
39 specifically prescribe with respect to the safe transportation of such
40 commodities. The Department shall from time to time determine and

1 prescribe what explosives are "other similarly dangerous explosives,"
2 and may prescribe the route or routes over which such explosives,
3 radioactive materials, or etiologic agents shall be transported.

4 (ii) Any person who violates this provision, or any regulation pre-
5 scribed hereunder by the Department, shall be guilty of a Class E
6 felony.

7 (3) Any shipment of radioactive materials made by or under the
8 direction or supervision of the Atomic Energy Commission or the De-
9 partment of Defense which is escorted by personnel specially desig-
10 nated by or under the authority of the Atomic Energy Commission or
11 the Department of Defense, as the case may be, for the purpose of na-
12 tional security, shall be exempt from the requirements of this section
13 and the rules and regulations prescribed thereunder. In the case of any
14 shipment of radioactive materials made by or under the direction or
15 supervision of the Atomic Energy Commission or the Department of
16 Defense, which is not so escorted by specially designated personnel,
17 certification upon the bill of lading by or under the authority of the
18 Atomic Energy Commission or the Department of Defense, as the
19 case may be, that the shipment contains radioactive materials shall be
20 conclusive as to content, and no further description shall be necessary
21 or required; but each package, receptacle, or other container in such
22 unescorted shipment shall on the outside thereof be plainly marked
23 "radioactive materials", and shall not be opened for inspection by the
24 carrier.

25 (d) Any person who knowingly delivers to any carrier engaged in
26 interstate or foreign commerce by land or water, and any person who
27 knowingly carries on or in any car or vehicle of any description oper-
28 ated in the transportation of passengers or property by any carrier en-
29 gaged in interstate or foreign commerce, by land, any explosive, or
30 other dangerous article, specified in or designated by the Department
31 of Transportation pursuant to subsection (e) of this section, under
32 any false or deceptive marking, description, invoice, shipping order,
33 or other declaration, or any person who so delivers any such article
34 without informing such carrier in writing of the true character thereof,
35 at the time such delivery is made, or without plainly marking on
36 the outside of every package containing explosives or other dangerous
37 articles the contents thereof, if such marking is required by regula-
38 tions prescribed by the Department of Transportation, shall be guilty
39 of a Class E felony.

1 (e) (1) The Department of Transportation shall formulate regu-
2 lations for the safe transportation within the United States of explo-
3 sives and other dangerous articles, including radioactive materials,
4 etiologic agents, flammable liquids, flammable solids, oxidizing mate-
5 rials, corrosive liquids, compressed gases, and poisonous substances,
6 which shall be binding upon all carriers engaged in interstate or
7 foreign commerce which transport explosives or other dangerous arti-
8 cles by land, and upon all shippers making shipments of explosives or
9 other dangerous articles via any carrier engaged in interstate or for-
10 eign commerce by land or water.

11 (2) The Department, of its own motion, or upon application made
12 by any interested party, may make changes or modifications in such
13 regulations, made desirable by new information or altered condition.
14 Before adopting any regulations relating to radioactive materials
15 the Department of Transportation shall advise and consult with the
16 Atomic Energy Commission.

17 (3) Such regulations shall be in accordance with the best-known
18 practicable means for securing safety in transit, covering the packing,
19 marking, loading, handling while in transit, and the precautions neces-
20 sary to determine whether the material when offered is in proper
21 condition to transport.

22 (4) Such regulations, as well as all changes or modifications there-
23 of, shall, unless a shorter time is specified by the Department, take
24 effect ninety days after their formulation and publication by the
25 Department and shall be in effect until reversed, set aside, or modified.

26 (5) In the execution of this section, the Department may utilize
27 the services of carrier and shipper associations, including the Bureau
28 for the Safe Transportation of Explosives and other Dangerous
29 Articles, and may avail itself of the advice and assistance of any
30 department, commission, or board of the Federal Government, and of
31 State and local governments, but no official or employee of the United
32 States shall receive any additional compensation for such service
33 except as now permitted by law.

34 (6) Whoever knowingly violates any such regulation shall be guilty
35 of a Class E felony.

36 (f) (1) The Department of Transportation is authorized and di-
37 rected to administer, execute, and enforce all provisions of this section,
38 to make all necessary orders in connection therewith, and to prescribe
39 rules, regulations, and procedures for such administration, and to em-
40 ploy such officers and employees as may be necessary to carry out these
41 functions.

(2) The Department is authorized to make such studies and conduct such negotiations, obtain such information, and hold such hearings as it may deem necessary or proper to assist it in exercising any authority provided in this section. For such purposes the Department is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this section shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(3) In administering and enforcing the provisions of this section, and the regulations prescribed thereunder the Department shall have and exercise all the powers conferred upon it by law and investigative powers and the power to examine and inspect records and properties of carriers engaged in transporting explosives and other dangerous to the packing and shipping of explosives and other dangerous articles in interstate or foreign commerce and the records and properties of shippers to the extent that such records and properties pertain articles and the nature of such commodities.

PART QQ—TITLE 50, U.S.C., AMENDMENTS

SEC. 374. (1) The text of section 13 of the Helium Act Amendments of 1960 (74 Stat. 923; 50 U.S.C. 167k), is amended to read as follows:

“Whoever knowingly violates any provision of this chapter or any regulation or order issued or any terms of a license granted thereunder shall be guilty of a Class E felony, except that the maximum fine shall be \$5,000.”

(2) The text of section 2 of title II of the Act entitled “An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes”, approved July 15, 1917, as amended (40 Stat. 220; 50 U.S.C. 192), is amended to read as follows:

“(a) If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this chapter, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws, and the person guilty of such failure shall be guilty of a regulatory offense under section 2-8F6 of title 18, United States Code.

1 “(b) If any other person knowingly fails to comply with any
2 regulation or rule issued or order given under the provisions of this
3 chapter, he shall be guilty of a regulatory offense under section 2-8F6
4 of title 18, United States Code.”

5 (3) Section 5306 of the Revised Statutes of the United States is
6 amended by—

7 (A) striking “or who makes any false statement or repre-
8 sentation upon which license and authority is granted for such
9 transportation, sale, or other disposition,”;

10 (B) striking “or who is guilty of any act of embezzlement, of
11 willful misappropriation of public or private money or property,
12 of keeping false acocunts, or of willfully making any false re-
13 turns,”; and

14 (C) striking “deemed guilty of a misdemeanor, and shall be
15 fined not more than \$5,000, and imprisoned in the penitentiary not
16 more than three years” and inserting “guilty of a Class E felony,
17 except that the maximum fine shall be \$5,000”.

18 (4) Section 5313 of the Revised Statutes of the United States is
19 amended by striking “deemed guilty of a misdemeanor, and shall be
20 fined not more than \$5,000, and imprisoned in the penitentiary not
21 more than three years” and inserting “guilty of a Class E felony,
22 except that the maximum fine shall be \$5,000”.

23 (5) Section 10 of the National Industrial Reserve Act of 1948
24 (62 Stat. 1227; 50 U.S.C. 459) is amended by striking out “sections
25 93, 198, and 203 of title 18; in section 99 of title 5;” and inserting
26 “sections 2-6E2 and 2-6F3 of title 18;”.

27 (6) Section 4 of the Subversive Activities Control Act of 1950
28 (64 Stat. 991; 50 U.S.C. 783) is repealed.

29 (7) Section 13 of the Subversive Activities Control Act of 1950
30 (64 Stat. 998; 50 U.S.C. 792) is amended by striking out paragraph
31 (3) of subsection (d) and redesignating paragraph (4) as (3).

32 (8) The second sentence of section 15 of the Subversive Activities
33 Control Act of 1950 (64 Stat. 1002; 50 U.S.C. 794) is amended to read
34 as follows: “Any individual who violates any provision of section 5
35 or 10 of this title shall be guilty of a Class E felony, except that the
36 maximum fine shall be \$10,000.”

37 (9) Section 21 of the Subversive Activities Control Act of 1950 (64
38 Stat. 1005; 50 U.S.C. 797) is amended by—

39 (A) striking out “willfully” and inserting “knowingly”; and

1 (B) striking out "misdemeanor and upon conviction thereof
2 shall be liable to a fine of not to exceed \$5,000 or to imprisonment
3 for not more than 1 year, or both" and inserting "Class E felony,
4 except that the maximum fine shall be \$5,000".

5 (10) Section 4 of the Communist Control Act of 1954 (68 Stat. 776;
6 50 U.S.C.) is amended by striking "and willfully".

7 (11) The text of section 6(a) of the Act entitled "An Act to require
8 the registration of certain persons who have knowledge of or have
9 received instruction or assignment in the espionage, counter-espionage,
10 or sabotage service or tactics of a foreign government or foreign polit-
11 ical party, and for other purposes," approved August 1, 1956 (70
12 Stat. 900; 50 U.S.C. 855(a)), is amended to read as follows:

13 "(a) Whoever knowingly violates any provisions of this subchapter
14 or any regulation thereunder shall be guilty of a regulatory offense
15 under section 2-8F6 of title 18, United States Code."

16 (12) Section 410(g) of the Act entitled "An Act to authorize ap-
17 propriations during the fiscal year 1970 for procurement of aircraft,
18 missiles, naval vessels, and tracked combat vehicles, and research, de-
19 velopment, test, and evaluation for the Armed Forces, and to authorize
20 the construction of test facilities at Kwaijalein Missile Range, and to
21 prescribe the authorized personnel strength of the Selective Reserve
22 of each reserve component of the Armed Forces, and for other pur-
23 poses", approved November 19, 1969 (83 Stat. 210 (g); 50 U.S.C.
24 1436(g)), is amended to read as follows:

25 "Any person who fails to comply with the filing requirements of this
26 section shall be guilty of a misdemeanor."

27 SEC. 374. (a) This section may be cited as the "Unlawful Mapping
28 of Defense Installations Crimes Act of 1973".

29 (b) Photographing and sketching defense installations.

30 (i) Whenever, in the interests of national defense, the President
31 defines certain vital military and naval installations or equip-
32 ment as requiring protection against the general dissemination
33 of information relative thereto, it shall be unlawful to make
34 any photograph, sketch, picture, drawing, map, or graphical rep-
35 resentation of such vital military and naval installations or equip-
36 ment without first obtaining permission of the commanding officer
37 of the military or naval post, camp, or station, or naval vessels,
38 military and naval aircraft, and any separate military or naval
39 command concerned, or higher authority, and promptly submit-
40 ting the product obtained to such commanding officer or higher

1 authority for censorship or such other action as he may deem
2 necessary.

3 (ii) Whoever violates this subsection shall be guilty of a
4 class E felony.

5 (c) Use of aircraft for photographing defense installations.

6 Whoever uses or permits the use of an aircraft or any contrivance
7 used, or designed for navigation or flight in the air, for the purpose of
8 making a photograph, sketch, picture, drawing, map, or graphical rep-
9 resentation of vital military or naval installations or equipment, in
10 violation of subsection (b) (i) of this section, shall be guilty of a
11 class E felony.

12 (d) Publication and sale of photographs of defense installations.

13 On and after thirty days from the date upon which the President
14 defines any vital military or naval installation or equipment as being
15 within the category contemplated under subsection (b) of this
16 section, whoever reproduces, publishes, sells, or gives away any
17 photograph, sketch, picture, drawing, map, or graphical representation
18 of the vital military or naval installations or equipment so defined,
19 without first obtaining permission of the commanding officer of the
20 military or naval post, camp, or station concerned, or higher authority,
21 unless such photograph, sketch, picture, drawing, map, or graphical
22 representation has clearly indicated thereon that it has been cen-
23 sored by the proper military or naval authority, shall be guilty of a
24 class E felony.

25 SEC. 375. (a) This section may be cited as the "Organization Regis-
26 tration Crimes Act of 1973".

27 (b) Definitions.

28 For the purposes of this section—

29 (1) "Attorney General" means the Attorney General of the
30 United States;

31 (2) "organization" means any group, club, league, society, com-
32 mittee, association, political party, or combination of individuals,
33 whether incorporated or otherwise, but such term shall not include
34 any corporation, association, community chest, fund, or founda-
35 tion, organized and operated exclusively for religious, charitable,
36 scientific, literary, or educational purposes;

37 (3) "political activity" means any activity the purpose or aim
38 of which, or one of the purposes or aims of which, is the control
39 by force or overthrow of the Government of the United States or
40 a political subdivision thereof, or any State or political subdivi-
41 sion thereof;

(4) an organization is engaged in "civilian military activity" if—

(i) it gives instruction to, or prescribed instruction for its members in the use of firearms or other weapons or any substitute therefor, or military or naval science; or

(ii) it receives from any other organization or from any individual instruction in military or naval science; or

(iii) it engaged in any military or naval maneuvers or activities; or

(iv) it engaged, either with or without arms, in drills or parades of a military or naval character; or

(v) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action;

(5) an organization is "subject to foreign control" if—

(i) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization; or

(ii) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization.

(c) (1) Registration of Certain Organizations. The following organizations shall be required to register with the Attorney General:

Every organization subject to foreign control which engage in political activity;

Every organization which engages both in civilian military activity and in political activity;

Every organization subject to foreign control which engages in civilian military activity; and

Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use

1 of force, violence, military measures, or threats of any one or more
2 of the foregoing.

3 (2) Every such organization shall register by filing with the At-
4 torney General, on such forms and in such detail as the Attorney Gen-
5 eral may by rules and regulations prescribe, a registration statement
6 containing the information and documents prescribed in subsection (d)
7 and shall within thirty days after the expiration of each period of
8 six months succeeding the filing of such registration statement, file
9 with the Attorney General, on such forms and in such detail as the
10 Attorney General may by rules and regulations prescribe, a supple-
11 mental statement containing such information and documents as may
12 be necessary to make the information and documents previously filed
13 under this paragraph accurate and current with respect to such
14 preceding six months' period. Every statement required to be filed by
15 this paragraph shall be subscribed, under oath, by all of the officers
16 of the organization.

17 (3) This Act shall not require registration or the filing of any
18 statement with the Attorney General by :

19 (i) The armed forces of the United States; or

20 (ii) The organized militia or National Guard of any State,
21 Territory, District, or possession of the United States; or

22 (iii) Any law-enforcement agency of the United States or of
23 any Territory, District or possession thereof, or of any State or
24 political subdivision of a State, or of any agency or instrumen-
25 tality of one or more States; or

26 (iv) Any duly established diplomatic mission or consular office
27 of a foreign government which is so recognized by the Department
28 of State; or

29 (v) Any nationally recognized organization of persons who
30 are veterans of the armed forces of the United States, or affiliates
31 of such organizations.

32 (d) Every registration statement required to be filed by any organ-
33 ization shall contain the following information and documents:

34 (1) The name and post-office address of the organization in
35 the United States, and the names and addresses of all branches,
36 chapters, and affiliates of such organization;

37 (2) The name, address, and nationality of each officer, and of
38 each person who performs the functions of an officer, of the organ-

1 ization, and of each branch, chapter, and affiliate of the organ-
2 ization;

3 (3) The qualifications for membership in the organization;

4 (4) The existing and proposed aims and purposes of the or-
5 ganization, and all the means by which these aims or purposes are
6 being attained or are to be attained;

7 (5) The address or addresses of meeting places of the organiza-
8 tion, and of each branch, chapter, or affiliate of the organization,
9 and the times of meetings;

10 (6) The name and address of each person who has contributed
11 any money, dues, property, or other thing of value to the organ-
12 ization or to any branch, chapter, or affiliate of the organization;

13 (7) A detailed statement of the assets of the organization, and
14 of each branch, chapter, and affiliate of the organization, the man-
15 ner in which such assets were acquired, and a detailed statement
16 of the liabilities and income of the organization and of each
17 branch, chapter, and affiliate of the organization;

18 (8) A detailed description of the activities of the organiza-
19 tion, and of each chapter, branch, and affiliate of the organiza-
20 tion;

21 (9) A description of the uniforms, badges, insignia, or other
22 means of identification prescribed by the organization, and worn
23 members;

24 (10) A copy of each book, pamphlet, leaflet, or other publica-
25 tion or item of written, printed, or graphic matter issued or
26 or carried by its officers or members, or any of such officers or
27 distributed directly or indirectly by the organization, or by any
28 chapter, branch, or affiliate of the organization, or by any of the
29 members of the organization under its authority or within its
30 knowledge, together with the name of its author or authors and
31 the name and address of the publisher;

32 (11) A description of all firearms or other weapons owned by
33 the organization, or by any chapter, branch, or affiliate of the
34 organization, identified by the manufacturer's number thereon;

35 (12) In case the organization is subject to foreign control, the
36 manner in which it is so subject;

37 (13) A copy of the charter, articles of association, constitu-
38 tion, bylaws, rules, regulations, agreements, resolutions, and all
39 other instruments relating to the organization, powers, and pur-

1 poses of the organization and to the powers of the officers of the
2 organization and of each chapter, branch, and affiliate of the
3 organization; and

4 (14) Such other information and documents pertinent to the
5 purposes of this paragraph as the Attorney General may from
6 time to time require.

7 All statements filed under this paragraph shall be public records
8 and open to public examination and inspection at all reasonable hours
9 under such rules and regulations as the Attorney General may
10 prescribe.

11 (e) The Attorney General is authorized at any time to make,
12 amend, and rescind such rules and regulations as may be necessary
13 to carry out this section, including rules and regulations governing
14 the statements required to be filed.

15 (f) Whoever violates any of the provisions of this section shall
16 be guilty of a class E felony, except that the maximum fine shall be
17 \$10,000.

18 SEC. 376. (a) Section 3 of the Trading with the Enemy Act (40 Stat.
19 412; 50 U.S.C. App. 3) is amended by—

20 (1) striking out in paragraph (a) “or attempt to trade,”;

21 (2) striking in paragraph (b) “or attempt to transport”, each
22 place it appears in such paragraph, and “or attempted to be
23 transported”;

24 (3) striking in paragraph (c) “, or attempt to send, or take
25 out of, or bring into” and “, or attempt to send, take, or transmit”;
26 and

27 (4) amending the last sentence of paragraph (d) to read as
28 follows: “It shall be unlawful knowingly to evade the submission
29 of any such communication to such censorship, or knowingly to
30 use any code or other device for the purpose of concealing from
31 such censorship the intended meaning of such communication.”.

32 (b) The second sentence of section 5(b)(3) of the Trading with
33 the Enemy Act (40 Stat. 415; 50 U.S.C. App. 5) is amended to read
34 as follows: “Whoever knowingly violates any of the provisions of this
35 subdivision or of any license, order, rule, or regulation issued there-
36 under, shall be guilty of a class E felony, except that the maximum
37 fine shall be \$10,000.”

38 (c) Section 12 of the Trading with the Enemy Act (40 Stat. 423;

1 50 U.S.C. App. 12) is repealed.

2 (d) Section 16 of the Trading with the Enemy Act (40 Stat. 425;
3 50 U.S.C. App. 16) is amended by striking “, upon conviction, be fined
4 not more than \$10,000, or, if a natural person, imprisoned for not
5 more than ten years, or both; and the officer, director, or agent of
6 any corporation who knowingly participates in such violation shall
7 be punished by a like fine, imprisonment, or both” and inserting “be
8 guilty of a Class E felony, except that the maximum fine shall be
9 \$10,000”.

10 (e) Section 19 of the Trading with the Enemy Act (40 Stat. 425;
11 50 U.S.C. App. 19) is amended by—

12 (A) striking “Ten days after the approval of this Act and
13 until the end of the war” and inserting “during any period of war
14 declared by the Congress”; and

15 (B) striking out the last paragraph of such section.

16 (f) Section 34 (a) of the Trading with the Enemy Act (60 Stat.
17 925; 50 U.S.C. App. 34) is amended by striking out “section 1 to 6
18 of the Criminal Code” and inserting “sections 2-5B1, 2-5B2, 2-5B3,
19 and 2-5B10 of title 18, United States Code”.

20 SEC. 377. (a) Section 327 of the Act entitled “An Act to establish an
21 Office of Selective Service Records to liquidate the Selective Service
22 System following the termination of its functions on March 31, 1947,
23 and to preserve and service the Selective Service records, and for
24 other purposes” approved March 31, 1947 (61 Stat. 32; 50 U.S.C. App.
25 327), is amended by striking out “punished by imprisonment for not
26 more than five years, or a fine of not more than \$10,000, or by both such
27 fine and imprisonment,” and inserting “guilty of a Class E felony,
28 except that the maximum fine shall be \$10,000”.

29 (b) Section 460 (b) (3) of the Military Selective Service Act, as
30 amended (62 Stat. 618; 50 U.S.C. App. 460 (b) (3)), is amended by
31 inserting “section 2-5B5 or 2-5B6 of title 18, United States Code, or”
32 after “defense to a criminal prosecution instituted under”.

33 (c) Section 462 of the Military Selective Service Act, as amended
34 (62 Stat. 622; 50 U.S.C. App. 462), is amended by—

35 (1) striking in subsection (a) “and any person who shall
36 knowingly make, or be a party to the making, of any false state-
37 ment or certificate regarding or bearing upon the classification or
38 in support of any request for a particular classification, for service

1 under the provisions of said sections, or rules, regulations, or
2 directions made pursuant thereto,” and “or knowingly counsels,
3 aids, or abets another to refuse or evade registration or service
4 in the Armed Forces or any of the requirements of said sections,
5 or of said rules, regulations, or directions,” and “or any person
6 or persons who shall knowingly hinder or interfere or attempt to
7 do so in any way, by force, or violence, or otherwise, with the
8 administration of said sections or the rules or regulations made
9 pursuant thereto, or who conspires to commit any one or more
10 of such offenses,” and “punished by imprisonment for not more
11 than five years or a fine of not more than \$10,000, or by both
12 such fine and imprisonment” and inserting in lieu of the last
13 matter stricken out “guilty of a Class E felony, except that the
14 maximum fine shall be \$10,000”;

15 (2) striking in subsection (b) beginning with “(1) who know-
16 ingly” down through “altered; or (6)”, and striking “, upon con-
17 viction, be fined not to exceed \$10,000 or be imprisoned for not
18 more than five years, or both” and inserting in lieu of the last
19 matter stricken out “be guilty of a regulatory offense under
20 section 2-8F6 of title 18, United States Code”.

21 (d) The text of section 468(f) of the Military Selective Service
22 Act, as amended (62 Stat. 625; 50 U.S.C. App. 468(f)), is amended to
23 read as follows: “Any person, or any officer or any person as defined
24 in this section who knowingly fails or refuses to carry out any duty
25 imposed upon him by subsection (b) of this section shall be guilty of a
26 Class E felony, except that the maximum fine shall be \$50,000.”

27 (e) The last sentence of section 468(h)(1) of the Military Selective
28 Service Act, as amended (62 Stat. 625; 50 U.S.C. App. 468(h)(1)), is
29 amended to read as follows: “Any such producer of steel or the re-
30 sponsible head or heads thereof refusing to comply with such require-
31 ment shall be guilty of a Class E felony, except that the maximum
32 fine shall be \$50,000.”

33 (f) Section 473 of the Military Selective Service Act, as amended
34 (65 Stat. 88; 50 U.S.C. App. 473), is amended by striking out “deemed
35 guilty of a misdemeanor and be punished by a fine of not more than
36 \$1,000 or imprisonment for not more than twelve months, or both”
37 and inserting “guilty of a regulatory offense under section 2-8F6 of
38 title 18, United States Code”.

39 SEC. 378. (a) Except as otherwise expressly provided, whenever in
40 this section an amendment is expressed in terms of an amendment to a

1 section or other provision, the reference is to a section or other provi-
2 sion of the Soldiers' and Sailors' Civil Relief Act of 1940.

3 (b) Section 200 is amended by striking out paragraph 2 and redes-
4 ignating paragraphs 3 and 4 as 2 and 3, respectively.

5 (c) Section 202 is amended by striking out "fine or" each place it
6 appears therein and inserting in lieu thereof "civil".

7 (d) Section 300(3) is amended to read as follows:

8 "(3) Any person who shall knowingly take part in any eviction or
9 distress otherwise than as provided in subsection (1) hereof shall be
10 guilty of a Class E felony."

11 (e) Section 301(2) is amended to read as follows:

12 "(2) Any person who shall knowingly resume possession of property
13 which is the subject to this section, otherwise than as provided in
14 subsection (1) of this section or in section 107, shall be guilty of a Class
15 E felony."

16 (f) Section 302(4) is amended to read as follows:

17 "(4) Any person who shall knowingly make any sale, foreclosure,
18 or seizure of property defined as invalid by subsection (3) hereof shall
19 be guilty of a Class E felony."

20 (g) Section 304(3) is amended by striking out "or attempts so to
21 do, shall be guilty of a misdemeanor and shall be punished by imprison-
22 ment not to exceed one year or by a fine not to exceed \$1,000 or both"
23 and inserting in lieu thereof "shall be guilty of a Class E felony".

24 (h) Section 305(3) is amended to read as follows:

25 "(3) Any person who shall knowingly take an action contrary to
26 the provisions of this section shall be guilty of a Class E felony."

27 (i) Section 700(2) is amended by striking out "fine or" and insert-
28 ing "civil".

29 SEC. 379. (a) Section 1302 of the Act entitled "An Act to further
30 expedite the prosecution of the war", approved March 27, 1942 (56
31 Stat. 186; 50 U.S.C. App. 643a), is amended by striking out "; and
32 anyone violating this provision shall be guilty of a felony and upon
33 conviction thereof shall be fined not exceeding \$1,000 or by im-
34 prisonment not exceeding 2 years, or both".

35 (b) Section 1303 of such Act (56 Stat. 186; 50 U.S.C. App. 643b)
36 is repealed.

37 SEC. 380. (a) The first section of the Act entitled "An Act to prevent
38 the making of photographs and sketches of military or naval res-
39ervations, naval vessels, and other naval and military properties, and
40 for other purposes" approved June 25, 1942 (56 Stat. 390; 50 U.S.C.

1 App. 781), is amended by striking out “and willfully” wherever it
2 appears therein.

3 (b) Section 3 of such Act (56 Stat. 391; 50 U.S.C. App. 783) is
4 amended to read as follows:

5 SEC. 3. Whoever knowingly violates any provisions of this Act shall
6 be guilty of a Class E felony.”

7 SEC. 381. (a) Section 2(a) of the Act entitled, “An Act to expedite
8 national defense, and for other purposes”, approved June 28, 1940
9 (54 Stat. 676; 50 U.S.C. App. 1152(a)), is amended by—

10 (1) adding at the end of paragraph (3) the following: “Sec-
11 tion 2-6D3 of title 18, United States Code, shall apply to this
12 paragraph.”; and

13 (2) striking out in the last sentence of paragraph (4) “felony
14 and upon conviction thereof shall be fined not exceeding \$1,000,
15 or by imprisonment not exceeding 2 years, or both” and inserting
16 in lieu thereof “Class E felony”.

17 SEC. 382. (a) The last sentence of section 403(c) (5) (A) of the Sixth
18 Supplemental National Defense Appropriation Act, 1942, is amended
19 to read as follows: “Any person who knowingly fails or refuses to
20 furnish any statement, information, records, or data required of him
21 under this subsection shall be guilty of a Class E felony, except that
22 the maximum fine shall be \$10,000.”

23 (b) Section 403(j) of such Act is amended by striking out “section
24 109 and 113 of the Criminal Code or in section 190 of the Revised
25 Statutes (U.S.C., Title 5, Sec. 99)” and inserting “section 2-6F3 of
26 title 18, United States Code”.

27 SEC. 383. Section 3(h) of the Renegotiation Act of 1948 (62 Stat.
28 259; 50 U.S.C. App. 1193h) is amended to read as follows:

29 “(h) Any person who knowingly fails or refuses to furnish any
30 information, records, or data required of him under this section shall
31 be guilty of a Class E felony, except that the maximum fine shall be
32 \$10,000.”

33 SEC. 384. The last sentence of section 105(e) (1) of the Renegotiation
34 Act of 1951 (65 Stat. 12; 50 U.S.C. App. 1215) is amended to read
35 as follows: “Any person who knowingly fails or refuses to furnish any
36 statement, information, records, or data required of him under this
37 subsection shall be guilty of a Class E felony, except that the max-
38 imum fine shall be \$10,000.”

39 SEC. 385. The last sentence of section 4 of the Housing and Rent Act
40 of 1947 (61 Stat. 195; 50 U.S.C. App. 1884) is repealed.

1 SEC. 386. Section 6 (b) of the Rubber Producing Facilities Disposal
2 Act of 1953 (67 Stat. 409; 50 U.S.C. 1941d(b)) is amended to read
3 as follows:

4 “Any person violating the provisions of this subsection shall be
5 guilty of a Class E felony, except that the maximum fine shall be
6 \$10,000.”

7 SEC. 387. The second paragraph of section 5 of the Act entitled “An
8 Act to authorize the Attorney General to adjudicate certain claims re-
9 sulting from evacuation of certain persons of Japanese ancestry under
10 military orders”, approved July 2, 1948 (62 Stat. 1232; 50 U.S.C. App.
11 1985), is amended by striking out “misdemeanor, and shall upon con-
12 viction thereof be subject to a fine of not more than \$2,000 or imprison-
13 ment for not more than one year, or both” and inserting in lieu there-
14 of “Class E felony, except that the maximum fine shall be \$2,000”.

15 SEC. 388. (a) The second sentence of section 10 of the War Claims
16 Act of 1948 (62 Stat. 1246; 50 U.S.C. App. 2009) is amended to read
17 as follows: “Whoever in the United States or elsewhere, pays or
18 offers to pay, or receives, on account of services rendered or to be
19 rendered in connection with any such claim, any remuneration in
20 excess of the maximum permitted by this section, shall be guilty of a
21 Class E felony, except that the maximum fine shall be \$5,000, and, if
22 any such payment shall have been made or granted, the administering
23 agency shall take such action as may be necessary to recover the same,
24 and, in addition thereto, any such claimant shall forfeit all rights
25 under this title.”

26 (b) Section 208 of the War Claims Act of 1948 (76 Stat. 1110; 50
27 U.S.C. App. 217g) is amended by striking out “Chapter 115” and
28 inserting “chapter 5”.

29 (c) Section 214 of the War Claims Act of 1948 (76 Stat. 1112;
30 50 U.S.C. App. 2017m), is amended by striking out “misdemeanor and,
31 upon conviction thereof shall be fined not more than \$5,000 or im-
32 prisoned not more than 12 months, or both” and inserting “Class E
33 felony, except that the maximum fine shall be \$5,000”.

34 SEC. 389. Section 103 of the Export Control Act of 1949 (64 Stat.
35 799; 50 U.S.C. App. 2073) is amended to read as follows:

36 “SEC. 103. Any person who knowingly performs any act prohibited,
37 or knowingly fails to perform any act required by the provisions of
38 this title, or any rule, regulation, or order thereunder, shall be guilty
39 of a regulatory offense under section 2-8F6 of title 18, United States
40 Code.”

1 SE3. 390. (a) Section 705 of the Defense Production Act of 1950
2 (64 Stat. 816; 50 U.S.C. App. 2155) is amended by—

3 (1) amending subsection (d) to read as follows:

4 “(d) Any person who knowingly performs any act prohibited or
5 knowingly fails to perform any act required by the above provisions
6 of this section, or any rule, regulation, or order thereunder, shall be
7 guilty of a Class E felony.”; and

8 (2) striking out in subsection (e) “, and any person willfully
9 violating this provision shall, upon conviction, be fined not more
10 than \$10,000 or imprisoned for not more than one year, or both”
11 each place it appears therein.

12 (b) Section 710 of the Defense Production Act of 1950 (64 Stat.
13 819; 50 U.S.C. App. 2160) is amended by—

14 (1) striking out in subsection (b) (4) “sections 281, 283, 284,
15 434, and 1914 of title 18, and section 190 of the Revised Statutes”
16 and inserting “section 2-6F3 of title 18”;

17 (2) striking out in subsection (c) “sections 281, 283, 284, 434,
18 and 1914 of title 18, and section 190 of the Revised Statutes” and
19 inserting “section 2-6F3 of title 18”;

20 (3) striking out in subsection (d) “sections 281, 283, 284, 434,
21 and 1914 of title 18, and section 190 of the Revised Statutes” and
22 inserting “section 2-6F3 of title 18”;

23 (4) striking out in subsection (e) “sections 281, 283, 284, 434,
24 and 1914 of title 18, and section 190 of the Revised Statutes” and
25 inserting “section 2-6F3 of title 18”; and

26 (5) amending the first sentence of subsection (f) to read as
27 follows: “No officer or employee of the United States or any
28 department or agency thereof (including Members of the Sen-
29 ate and House of Representatives) shall receive, by virtue of his
30 office or employment, confidential information, and (1) use that
31 information in speculating, directly or indirectly, on any com-
32 modity exchange, or (2) disclose that information for the pur-
33 pose of aiding any other person so to speculate.”

34 (c) Section 17 of the Defense Production Act of 1950 (64 Stat.
35 821; 50 U.S.C. App. 2165) is amended by striking out “felony and,
36 upon conviction, shall be fined not more than \$1,000 or imprisoned
37 for not more than one year, or both” and inserting “Class E felony”.

38 SEC. 391. (a) Section 403 of the Federal Civil Defense Act of 1950
39 (64 Stat. 1255; 50 U.S.C. App. 2255) is amended by striking out the
40 last sentence of subsection (b) and inserting in lieu thereof: “The

proceedings shall be deemed a Federal official proceeding under sections 2-6D1 and 2-6D2 of title 18, United States Code."

(b) Section 204 of the Federal Civil Defense Act of 1950 (64 Stat. 1251; 50 U.S.C. App. 2284) is amended by striking out "unlawful and shall subject such person to a fine of not more than \$1,000 or imprisonment of not more than one year, or both." and inserting in lieu thereof "unlawful. Whoever violates the provisions of this section shall be guilty of a Class E felony."

SEC. 392. Subsections (a) and (b) of section 6 of the Export Administration Act of 1969 (83 Stat. 844; 50 U.S.C. App. 2405) are amended to read as follows:

"SEC. 6. (a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be guilty of a Class E felony, except that the maximum fine shall be \$10,000 for a first offense, and, for a second or subsequent offense, three times the value of the exports involved or \$20,000, whichever is greater.

"(b) Whoever knowingly exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any communist-dominated nation, shall be guilty of a misdemeanor."

TITLE IV—GENERAL PROVISIONS

SEVERABILITY

SEC. 401. If the provisions of any part of this Act or the application of any part of this Act to any person or circumstance is held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected.

COMPENSATION OF PAROLE COMMISSIONERS

SEC. 402. (a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof "(58) Chairman, Parole Commission."

(b) Section 5315 of title 5, United States Code, is amended by adding at the end thereof "(95) Member, Parole Commission."

EFFECTIVE DATE

SEC. 403. This Act shall become effective on January 7 of the year following the year of the final adjournment of the Congress following the Congress in which this Act was enacted.

[From the Congressional Record, Jan. 12, 1973]

S. 1—CRIMINAL JUSTICE CODIFICATION REVISION, AND REFORM ACT OF
1973

Mr. McCLELLAN. Mr. President, last week I introduced for myself and the distinguished Senators from North Carolina (Mr. Ervin) and Nebraska (Mr. Hruska) S. 1, the Criminal Justice Codification, Revision, and Reform Act of 1973.

The Senate legislative counsel has suggested that this bill may be one of the longest ever introduced in the U.S. Senate, longer even than the Internal Revenue Code of 1954.

But if the occasion of the introduction of this legislation is important or historic, it is for reasons more profound than the sheer bulk of the bill.

Unlike some of the States—14 at last count—and unlike most of the other countries of the world, the United States has never had a true “criminal code.” Starting in 1790, the Congress has enacted criminal statutes, and these statutes have been cumulated and reordered and revised technically in 1877 (revised statutes), 1909 (35 Stat. 1088), and 1948 (62 Stat. 683). But the Federal criminal law has remained a consolidation rather than a code.

The difference between a code and a consolidation has been stated as:

“[The term ‘code’]—is usually reserved for a body of laws which are drafted at one time, by one person or a closely cooperating body of draftsmen, with the intention of stating clearly and systematically all the rules applicable in a given area of law—for example, penal law. This description . . . may be contrasted with the situation reflected in . . . [a] Consolidated Laws . . . The statutes in . . . [a] Consolidated Laws were drafted at many different times, by different bodies of draftsmen, to cover a very diverse body of subjects in an essentially random manner. That is, the legislator in these laws was dealing with small problems, as they arose, and was making no particular effort to achieve unity, consistency, or thorough coverage in a broad area of law.” (Strauss, *On Interpreting The Ethiopian Penal Code*, V Journal of Ethiopian Law, 375, 389–390 (1968).)

Mr. President, S. 1 is far from a final penal code for the United States. In fact, while my cosponsors and I are satisfied that its structure, form, and general outlines are sound, we view it only as the preliminary and immediate work product of 2 years of efforts by the Subcommittee on Criminal Laws and Procedures, which I am privileged to chair. I note, too, that a number of the provisions in S. 1 will be controversial. Indeed, there is much room for debate on this bill. I myself have not reached firm judgments on a number of provisions as they are now drafted. There is much that I wish to study further. My mind is not made up definitely on everything the bill contains. Both the Senator from North Carolina (Mr. Ervin) and the Senator from Nebraska (Mr. Hruska) also share with me differences of emphasis on sections of S. 1 as now drafted. I think this is only to be expected in a measure of its scope and magnitude.

But when all that is said, the fact is that the “Criminal Justice Codification, Revision and Reform Act of 1973” represents the first legislative proposal ever filed in the Congress in bill form to create a “Federal Criminal Code.” It is an important and historic milestone.

But it is not a milestone without a background. In a very real sense, this bill is the product of many years of hard work and careful thought by a number of distinguished and concerned people. Indeed, it represents an example of the best kind of joint legislative development by private and public bodies and individuals.

The real starting point for this legislation came in 1952—20 years ago—when the American Law Institute began work on the planning and drafting of a “Model Penal Code,” and its chief reporter published the substance of the plan in a law review article. Wechsler, “The Challenge of a Model Penal Code,” 65 Harvard Law Review 1097 (1952).

The first concrete step leading to the introduction of the “Criminal Justice Codification, Revision and Reform Act of 1973” then came in March of 1953, when the Council of the American Law Institute met and considered “Tentative Draft No. 1” of a Model Penal Code.

In commenting on those early beginnings, the chief reporter for the Model

Penal Code, now the director of the American Law Institute, told the Subcommittee on Criminal Laws and Procedures in 1971:

"Preliminary studies left no doubt to us that the central challenge of the penal law inhered in the state of our penal legislation. Viewing the country as a whole, criminal law consisted of an uneasy mixture of fragmentary and uneven and fortuitous statutory articulation, common law concepts of uncertain scope and a miscellany of modern enactments passed on an ad hoc basis and frequently producing gross disparities in liability or sentence. Hearings before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary." *Reform of the Federal Criminal Law*, 92d Cong. (hereinafter cited as *Hearings*, Pt. II, p. 552.)

The institute labored for 10 years and in 1962 published the "proposed Official Draft" of a Model Penal Code.

Without in any way overlooking the groundbreaking significance of the enactment in 1942 by the Louisiana legislature—Act 43 of 1942—of the first modern American Criminal Code—itself the product of over 100 years of effort—see McClellan, "Codification, Reform, and Revision: The Challenge of a Modern Federal Criminal Code," 1971 Duke Law Journal 661, and without neglecting to mention the modern criminal codes passed simultaneously with the development of the Model Penal Code in Wisconsin, 1965; Illinois, 1962; Minnesota, 1963; and New Mexico, 1963; it may be said that the next major step in the lineal progression toward the introduction of S. 1 was the legislative creation in New York State in 1961 of a "Temporary Commission on Revision of the Penal Law and Criminal Code."

The New York Commission prepared a code which differs from and in some ways is better attuned to the needs of society than the Model Penal Code, but which clearly traces its lineage to the institute's brilliant work. In signing the New York Revised Penal Law, Gov. Nelson Rockefeller observed:

"[The Code] reorganizes and modernizes penal provisions proscribing conduct which has traditionally been considered criminal in Anglo-Saxon jurisprudence. Related crimes are grouped together in logically related titles, definitions are more carefully prescribed, and a new scheme of sentencing is provided affording ample scope for both the rehabilitation of offenders and the protection of society. In line with the Commission's objective, a system of penal sanction is achieved which protects society against transgressors, balanced with safeguards for persons charged with crime." (Governor's Memorandum of Approval, July 20, 1965)

A similar comment could be made of this bill.

The next key step was taken by the Congress itself in 1966. In that year Public Law 89-801 was enacted, creating a "National Commission on Reform of Federal Criminal Laws," called after its distinguished Chairman, former Gov. Edmund G. "Pat" Brown of California, the "Brown Commission." The Commission was charged by the Congress to:

"Make a full and complete review and study of the statutory and case law of the United States which constitutes the Federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the Federal system of criminal justice. It shall be the further duty of the Commission to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice."

The Commission, on which my two cosponsors and I were privileged to serve, prepared its own draft recommendations, which also made important improvements, but followed lineally from the earlier works. The product of nearly 3 years of deliberation by the Commission, its advisory committee, consultants, and staff, the recommendations were submitted to the Congress and the President on January 7, 1971, in the form of a final report. A special comment here on the contribution by the Commission's Director, Prof. Louis Schwartz, is appropriate. History will one day record that it was in no small measure due to his intellectual insight and aid that the enactment of a Federal code was made possible. The final report itself, some 364 pages in length, was submitted as a "work basis" for congressional consideration. In fact, it has served as just that, for intensive and extensive hearings by the Subcommittee on Criminal Laws and Procedures. The bill that we have now introduced derives from the draft of the National Commission, in much the same

way that the National Commission's draft derives from the New York Revised Penal Law and the Model Penal Code. As members of the Commission, the subcommittee, and sponsors of the bill, we hope that it, too, is an extension and improvement over earlier works.

A welcome next step came when the President of the United States, on January 16, 1971, issued a statement commending the Brown Commission for its labors and directing the U.S. Department of Justice in a simultaneous memorandum to establish a special team of attorneys within the Department to work full-time on the study of the draft and codification and to "work closely with appropriate congressional committees and their staffs through the evaluation and recommendation process." President Nixon declared in his statement:

"Over the two centuries the Federal criminal law of the United States has evolved in a manner both sporadic and haphazard. Needs have been met as they have arisen. Ad hoc solutions have been utilized. Many areas of criminal law have been let to development by the courts on a case-by-case basis—a less than satisfactory means of developing broad governing legal principles.

Not unexpectedly with such a process, gaps and loopholes in the structure of Federal law have appeared; worthwhile statutes have been found on the books side by side with the unusable and the obsolete. Complex, confusing and even conflicting, laws and procedures have all too often resulted in rendering justice neither to society nor to the accused.

"Laws that are not clear, procedures that are not understood, undermine the very system of justice of which they are the foundations." (*Hearings*, Pt. I, p. 5)

In addition, the President had this to say about a new code in his radio address to the Nation on crime on October 15, 1972:

"I will propose to the new Congress a thorough-going revision of the entire Federal criminal code, aimed at better protection of life and property, human rights and the domestic peace."

We will welcome his suggestions and support in this effort.

Finally, a summary of the efforts of the Subcommittee on Criminal Laws and Procedures in 1971 and 1972 may also serve as a useful background to the study of this bill.

In February of 1971, the subcommittee began its hearings and studies on the recommendations of the Commission. The hearings and studies continued over the course of the 92d Congress. When the final report of the Commission was released, the subcommittee sent out 6,000 letters to all State attorneys general, local and county district attorneys, professors of criminal law and related fields, criminal defense attorneys, and private groups, asking for comments on the recommendations of the Commission. A hearing record has now been compiled which, when all the material is printed, will run well over 4,000 pages of testimony, statements, and exhibits. There have been 13 days of public hearings on the work of the Commission. State experience with criminal law revision and on the various policy questions presented by the Draft Code prepared by the National Commission. In all, 64 witnesses gave testimony before the subcommittee during these hearings. Prepared statements have been received from approximately 50 additional persons or organizations.

Numbers alone do not do credit to the tremendous amount of study, discussion, and preparation that went into the presentations of a number of the organizations which appeared or submitted comments: The organizations include: the Association of the Bar of the City of New York, the American Civil Liberties Union, the National Legal Aid and Defender Association, the National Council on Crime and Delinquency, the New York County Lawyers Association, the National District Attorneys Association, the National Association for the Advancement of Colored People Legal Defense and Education Fund, the Federal Bar Association, the Committee for Economic Development and the American Bar Association's Sections on Taxation, Antitrust, Corporation, Banking, and Business Law, and a Special Committee of the Section of Criminal Law of the American Bar Association.

In addition, a number of staff studies and surveys were undertaken by the subcommittee which have involved the sending of questionnaires to various groups requesting specialized information and suggestions. A mailing was made to district attorneys and public defenders in States having a bifurcated trial system in capital cases: a questionnaire was sent to all State and local wardens and correctional administrators on the utility of "good time" credits

against prison sentences; a questionnaire was sent to all 92 U.S. chief probation officers—which drew an 80 percent response rate—on aspects of probation; a letter was sent to the mental health departments of each of the 50 States setting forth all the proposed approaches to the problem of the criminal defendants who may be mentally ill; letters were sent to groups involved with Indian affairs and to the attorneys general of the States which now have criminal jurisdiction over Indians, requesting opinions on the scope of Federal criminal jurisdiction over Indians; a questionnaire was sent to each Federal executive department, agency, and commission with jurisdiction over one or more offenses in the United States Code requesting an analysis, comparison, and evaluation of the impact of the proposed code on their work; a letter-questionnaire was sent to each of the professors of comparative law in North America and to each of the foreign law divisions of the Library of Congress requesting detailed information on the form and content of foreign criminal codes.

An additional word on the foreign law study, unique in depth and scope, may be in order, for the staff of the Law Library of the Library of Congress deserves special commendation for, in a relatively short period of time, preparing detailed studies on the criminal law and criminal codes of 25 foreign countries; the comparative law study, published as part III-C—Comparative Law—of our hearings, has provided all of us with much food for thought.

Further, the Administrative Office of the U.S. Courts prepared several volumes on the criminal business of the Federal courts and the impact of the proposed code. In turn, this study has been the subject of extensive correspondence by the subcommittee with the Federal judiciary. An effort has also been made to enlist the aid and support of the relevant advisory committees of the judicial conference. In this connection, the assistance of Judges Albert B. Maris, of Philadelphia, and J. Edward Lumbard, of New York, deserves special mention. They have been most understanding and helpful. The National Institute of Law Enforcement and Criminal Justice also prepared several specific memoranda, and the Department of Justice has made a special effort to work closely with the subcommittee.

In light of all this effort, I am confident that when it is finally printed, the complete record of the subcommittee's hearings will provide the basic source material for the task of criminal law reform not only now, but for years to come. It should prove of particular aid to those States which will face the task of codification, revision, and reform after us.

Finally, the subcommittee prepared a 524-page committee print, which embodied tentative resolutions of a number of issues raised by the hearings and the subcommittee's studies. Over 1,800 copies of this print were circulated throughout the country to all of the witnesses who had appeared in the hearings, law professors, and other interested groups and individuals. Their many and detailed comments and criticisms have been reflected in the proposal we have now introduced.

And I underline the word "proposal," for just as the Brown Commission's efforts were a "work basis," so this legislation is only a "study bill." We have taken a major step forward, but we have a long way to go.

Mr. President, many people deserve credit for the effort that has been made by the subcommittee to implement the recommendations of the National Commission. Each member of the subcommittee has made a special effort to be at the hearings and to participate in every way possible in the processing of these most important recommendations. Senators Ervin, Kennedy, Hart, and Thurmond deserve special mention. Each has given much of his time. But none deserves more credit than the distinguished Senator from Nebraska (Mr. Hraska). He has given unselfishly both of his time and his talent over the past 2 years. As we all know, a Senator is frequently called upon to attend to necessary business away from Washington. On each occasion that I have had to attend to other duties, my colleague from Nebraska has faithfully seen that the work of the subcommittee on the recommendations of the National Commission went forward. It is in no small measure due to his special efforts that the subcommittee has made its progress.

Mr. President, one last item should be made explicit about this bill at this point. The "Criminal Justice Codification, Revision and Reform Act of 1973" is not a partisan bill. The goals of codification and reform are shared by both major political parties. The need for coordination, systematization, and simpli-

fication of the Federal criminal laws is accepted by Members on both sides of the aisle in both Houses of Congress. Moreover, this bill should not be looked at "politically." As I explained upon the receipt of the final report of the National Commission:

"There is no surer lesson of history than that politics should not be mixed in the process of codification, reform, and revision, although it will inevitably, in some measure, taint the work of any such endeavors. . . . The issues of crime and criminal justice . . . are far too important to be made the subject of narrow political advantage. Too much is at stake and too great is the need for reform to run the risk of losing it all for the momentary gains of politics. Debate, on the other hand, is not only to be expected, but to be welcomed, for it is only through the examination of diverse views stated by able advocates that we may reach sound decisions. . . . Differences should be confined to particular issues and not generalized to the Code itself. Otherwise, the attempt will be in vain." (McClellan, *Codification, Reform, and Revision: The Challenge of a Modern Federal Criminal Code*, 1971 Duke L.J. 663)

It is appropriate now to turn to the bill itself.

I. Structure

The bill is divided into four titles.

Title I, the heart of the bill, sets forth the provisions to be included in a new title 18 of the United States Code. The new title 18 will be entitled "Federal Criminal Code," in contrast with the present "Crimes and Criminal Procedure," since criminal procedural provisions are better dealt with through the Rules of Criminal Procedure, at least in most cases. The new title 18 is itself divided into three parts: Part I—The General Part; Part II—The Special Part; and Part III—Administration.

There are four chapters in Part I (The General Part): Chapter 1, General Provisions; Chapter 2, Principles of Criminal Liability; Chapter 3, Bar and Defenses to Criminal Liability; and Chapter 4, Sentencing. There are 44 sections in these four chapters, all of them applicable or potentially applicable to all of the specific crimes and offenses or punishment therefor in the Code and other Federal legislation.

There are five chapters in Part II (The Special Part); Chapter 5, Offenses Involving the Nation; Chapter 6, Offenses Involving Governmental Processes; Chapter 7, Offenses Against the Person; Chapter 8, Offenses Against Property; and Chapter 9, Offenses Against Public Order. There are 137 sections in these five chapters, all but a handful of which define the elements of specific offenses against the United States.

There are four chapters in Part III (Administration); Chapter 10, Law Enforcement; Chapter 11, Courts; Chapter 12, Corrections; and Chapter 13, Miscellaneous. There are 99 sections in these four chapters.

Where appropriate, the chapters are further divided into subchapters. A numbering system has been devised that leaves room for change and expansion but enables a reader to know instantly into which Part, Chapter, and Subchapter a particular statute belongs.

Title II of the bill transfers the remaining criminal procedure sections in present Title 18 of the United States Code into the Federal Rules of Criminal Procedure.

Title III sets forth the necessary conforming amendments. These amendments are of two types: (1) Those that transfer from present title 18 specific offense statutes that more properly belong with the other statutory law on the subject. For example, a number of criminal statutes relating to farm products are moved to title 7, Agriculture; a number of criminal statutes relating to Indians are moved to title 25, Indians; and a number of criminal statutes relating to the post office are moved to title 39, The Postal Service. (2) Those that conform the language or the criminal justice policy of the other 49 titles of the United States Code to that of the projected Federal Criminal Code.

Title IV includes a severability clause and provides for a delayed effective date to give Federal judges, prosecution personnel, probation officers, defense counsel, legal scholars, and the community at large ample time to prepare for an easy conversion to the new Code. Under this provision, an entire Congress is provided in which technical amendments may be made before the Code becomes effective. Thus, for example, if the Code were enacted by the 93d Con-

gress in 1974, it would not become effective until the January following the final adjournment of the 94th Congress, or January 1977.

If it has taken twenty years to reach the date of filing a Code bill for the Federal Government, we can afford to take our time before putting such a Code into effect.

The lesson of history, as I pointed out in my Duke Law Journal article, is that—

"History . . . teaches the futility of haste. The codes of Justinian and Napoleon carried with them the imperfections of too little attention to detail. Each stands in sharp and unfavorable contrast with the remarkable effort of the German nation in the production, criticism, and recodification of its civil code. It is not, of course, necessary that an ideal or perfect product be produced; the study of history indicates in its careful students a measure of humility. The code that the Congress writes today will serve others tomorrow, but we must recognize that today's work will be tomorrow reexamined—if nothing else, history teaches that each new generation rightly desires to develop its own fundamental code of conduct. Enough time must be spent to produce a workable and just code for today, without laboring too long in an idle attempt to secure perpetual validity through perfection." (McClellan, *Codification, Reform, and Revision: The Challenge of a Modern Federal Criminal Code*, 1971 Duke Law Journal 663).

II. Premises

Title I of the "Criminal Justice Codification, Revision and Reform Act of 1973" rests on a number of premises.

(1) Federal Criminal Jurisdiction.—The criminal jurisdiction of the Federal Government is a limited jurisdiction. It is and must remain limited to the specific needs and areas delineated by the Constitution and our traditions of federalism. The Draft Federal Criminal Code, prepared by the National Commission, however, was greeted by substantial criticism with respect to some of its jurisdictional provisions. It was suggested in the Subcommittee's hearings that the Draft Code might lead to a national police force. This led to a great deal of concern. In response to that concern, the proposed bill carefully redrafts the National Commission's proposals so that there is little significant expansion over present law of the reach of the Federal power to investigate and prosecute crime and criminals, and where an expansion necessarily occurs, it is carefully circumscribed.

The key difference between present title 18 statutes and proposed title 18 statutes is that the basis for Federal prosecution is written into the definition of the crime in the present law but is stated in a separate subsection in the proposed code. Where Federal jurisdiction is complete and inherent, however, as in the crime of treason or other national security offenses, there is, of course, no such jurisdictional subsection.

This new treatment of jurisdiction is important. Rather than defining certain conduct which interferes with a jurisdictional factor as criminal, the code would define certain conduct as criminal and declare that the malefactor is subject to prosecution by the Federal Government where such conduct or misconduct takes place within the Federal jurisdiction states. For example, under the present mail fraud statute (18 U.S.C. § 1341 (1964)), the offense is written, and its "gist" has been accurately perceived not as fraud punishable by the Federal Government because its mails are used, but as a sully of the Federal sovereign by depositing fraud-related materials in its mails. (E.g., *Atkinson v. United States*, 344 F. 2d 97, 98 (8th Cir.), *cert. denied*, 382 U.S. 867 (1965).) Consequently, each mailing is a separate offense, although it was done in execution of a single fraud. (*Wood v. United States*, 279 F. 2d 359 (8th Cir. 1960).)

Yet the mailing of one letter in one fraudulent scheme and its consequent defrauding of ten victims remain only one offense punishable by a maximum of only five years, regardless of the enormity of the fraud perpetrated. Finally, under present law, the Government must prove that the defendant at least contemplated that his fraud would be committed by use of the mails. (*United States v. Kellerman*, 431 F. 2d 319 (2d Cir.), *cert. denied*, 400 U.S. 957 (1970).) Under the proposed Code, however, the offense is conceived and formulated as a scheme to defraud. (Proposed 18 U.S.C. § 2-8D5.) Use of the mails becomes a jurisdictional base under which the offense may be federally

prosecuted, with the consequence that several aspects of present law just mentioned are reversed.

Although the change in the treatment of jurisdiction and criminal conduct is, in a real sense, more formal than substantial, several important consequences flow from the change, consequences which make it possible, in fact, to write a Federal penal code.

First, definitions of offenses can be consolidated and standardized without the need, for example, of an enormous number of separate statutes for different kinds of theft or robbery. Second, since the focus of the statutes is on the criminal misconduct rather than on the breach of a Federal jurisdictional factor, punishment can be proportionate to the conduct rather than scaled to the jurisdictional feature. Third, the Code would eliminate the multiplication of offenses that results from the existence of multiple jurisdictional bases.

Thus, theft of Government property from the mail on a military reservation would no longer be three offenses, but one, prosecutable by the Federal Government on any one of three grounds: Federal enclave, U.S. mails, or Federal property. Fourth, offenses are defined in a fashion consistent with the terms of international treaties for extradition of offenders. At present, problems have been encountered when the United States seeks to extradite a person from a foreign country for a Federal crime such as "use of the mails to defraud" and not for mailing a letter pursuant to a scheme to defraud.

(2) Technique of drafting.—Under title I, a conscious effort has been made to avoid verbose or technical language and endless examples, but rather the effort was made to speak in common English.

Present title 18, U.S.C. section 2311, for example, prohibits theft of a motor vehicle which is defined to mean "automobile, automobile truck, automobile wagon, motorcycle, or any other selfpropelled vehicle designed for running on land but not on rails." Proposed § 2-8-D3 simply describes the term "property of another." Present title 18 also makes criminal "extortionate credit transactions" (18 U.S.C. §§ 891-896). The proposed code prohibits "loansharking" (§ 2-9C2)—and calls it that.

The manner in which offenses are drafted is designed to avoid the need for extensive cataloging of terms for definitional purposes and to make the code understandable to everyone.

The proposed code makes clear that its language is to be construed by the courts in light of purpose rather than with an eye toward technicalities. There is a section which sets forth the rule of construction:

"The code shall be construed in light of . . . [the] principle [of legality] as a whole according to the fair import of its terms to achieve its general purposes (§ 1-1A3)."

And there is an entire section which sets forth the General Purposes of the Federal Criminal Code:

"The purpose of this code is to establish justice in the context of a Federal system so that the nation and its people may be secure in their persons, property, relationships, and other interests.

"This code aims at the articulation of the nation's fundamental system of public values and its vindication through the imposition of merited punishment.

"This code seeks to promote the general security through deterrence by giving due notice of the offenses and sanctions prescribed by law, and where this proves ineffective, by the rehabilitation of the corrigible offender or the appropriate incapacitation of the incorrigible offender." (§ 1-1A2.)

Repetitive definitions are specifically avoided by providing that the term "includes," as used in specific offenses, is to be read as if the phrase "but is not limited to" is also set forth.

Generally, where a technical word or phrase is used in more than one section in a chapter, it is defined in the introductory section in the chapter; where such a word or phrase is used in more than one chapter, it is defined in the general definitions section in The General Part, § 1-1A4.

To avoid the temptations to appellate litigation that can flow from different linguistic patterns, a standard and uniform format was developed for all of the specific offenses in the proposed title 18. The specific format is not important in terms of policy, but it is important that there be uniformity if this is to be a code rather than a mere consolidation masquerading as a code.

By the technique of drafting simply, uniformly, and precisely, it is hoped

that a more rational Federal penal policy can be implemented with confidence, that it will not be frustrated in the courts because of the inherent ambiguity of human language or misunderstood by the juries who must apply it to concrete cases.

(3) The Sentencing Scheme.—In present title 18, the maximum sentence and, where indicated, the minimum sentence, is stated as part of the definition of the crime. Not surprisingly under such an approach, there are 18 different maximum prison terms and 14 different fine levels in present title 18. In lieu of this method, the proposed code classifies all offenses into one of seven categories: Class A felony, Class B felony, Class C felony, Class D felony, Class E felony, Misdemeanor, and Violation. (§ 1-1A5) This separation of the definition of an offense from the sentence to be imposed was one of the most significant contributions of the Model Penal Code. In Tentative Draft No. 2 (1954), the Chief Reporter noted:

"The number and variety of the distinctions of this order found in most existing systems is one of the main causes of the anarchy in sentencing that is so widely deplored. Any effort to rationalize the situation must result in the reduction of distinctions to a relatively few important categories." Model Penal Code, A.L.I. Tent. Draft No. 2, p. 10.]

Other features of the sentencing scheme, which has been designed to give our courts a full range of options, may be quickly sketched. It is streamlined and integrated. It carries forward, as the Commission recommended (Final Report at 440-41), the concept of upper range sentences for dangerous special offenders. (On the need for and rationale of such sentences, see McClellan, *The Organized Crime Control Act (S. 30) or Its Critics: Which Threatens Civil Liberties*, 46 Notre Dame Law, 57, 146-88 (1970).)

In doing so, it achieves by a legislative determined proportionate maximum something that title X of Public Law 91-452 had left to judicial determination on a case by case basis, subject to a 25 year upper limit. As under present law, such sentences are made subject to appellate review. (See *id.* at 174-88.) Whether appellate review should be authorized on a broader scope, as the Senator from Nebraska (Mr. Hruska) has long advocated, is a question that will merit close scrutiny in the coming legislative hearings. Certainly, the evidence of sentence disparity presented to the Subcommittee calls for some close attention. I, for one, am beginning to believe that some sort of review is needed in this area, and it is my intention to hold additional hearings on this vital issue soon.

The bill would grant greater flexibility to Federal trial judges to make the punishment fit the crime and the offender. It also explicitly recognizes that probation and parole can be made more effective substitutes for costly-to-taxpayers and often counter-productive incarceration. Finally, the bill rejects in large part the notion of indeterminate sentences on the ground that our Federal judges acting with United States Parole Board (renamed the Parole Commission, § 3-12F1) are and should both be the duly constituted authorities to determine length of imprisonment.

(4) Techniques of Grading.—The National Commission in its Draft proposed the use of "piggyback" jurisdiction as a means for achieving appropriate sentence grading where certain offenses were committed. In the Final Report, the Commission recommended, that, although the Study Draft had been somewhat more expansive, crimes against persons and property which take place in the course of commission of a Federal offense should themselves be separately prosecutable in the Federal courts as Federal offenses. (See generally comment 81 Yale L.J. 1209 (1972).) The Commission set forth in its § 201(b) as a jurisdictional base for Federal investigation and prosecution that—

"The offense is committed in the course of committing or in immediate flight from the commission of any other offense defined in this code over which federal jurisdiction exists."

This provision was extensively criticized in Hearings before the Subcommittee on Criminal Laws and Procedures, chiefly by representatives of the National Association of Attorneys General and the National Association of District Attorneys on the ground that it could lead to a vast expansion of Federal criminal jurisdiction.

Appropriate grading, not expansion of jurisdiction, was the purpose of § 201(b), as I can attest as a member of the Commission, and as Governor

Brown and Congressman Poff, the Chairman and Vice Chairman, explained to the Subcommittee in its initial hearings.

In line with this purpose, the proposed code has been recast, using a different means of drafting to achieve the same objective: appropriate sentence grading where compound criminal conduct is present. With the use of this technique, it will not be necessary to use "piggyback" jurisdiction.

The technique used in the bill is actually the same technique as now used in individual sections of the present title 18, although under the proposed bill it has been used systematically rather than idiosyncratically. For example, in the present bank robbery statute (18 U.S.C. § 2113), the basic offense of bank robbery is punishable by a maximum of twenty years imprisonment (§ 2113(a)), but the maximum may be increased up to twenty-five years if "assault" occurs in the course of the bank robbery (§ 2113 (b)), or up to death if there is a "murder" or "kidnapping" in the course of such robbery (§ 2113 (e)).

The key provision in the bill is a subsection of proposed section 1-1A5 (Classification of Offenses), which reads as follows:

"(d) Compound offense.—Offenses are graded by simple classification or by cross reference to the classification of designated compound offenses. If a designated offense is committed as an integral part of, including immediate flight from, the commission of another offense, the compound offense is an offense of the classification of the designated offense or, where appropriate, a lesser included offense of the designated offense."

This approach, best termed "compound grading" is distinguishable from and superior to "piggyback" jurisdiction in several ways. By its very nature, compound grading will permit only the assaultative or violent qualities of criminal conduct to be considered as aggravating factors for the purpose of sentencing. In contrast, "piggyback" jurisdiction, as a technique, can be confined in this fashion, but, as the Study Draft shows, its potential is much less restrictive. Any offense could be "piggybacked" onto any other offense. The danger of an ever expanding Federal jurisdiction would always be present.

In addition, compound grading is appropriate only when conduct of a potentially higher classification is considered in relation to other less serious conduct. It envisions, moreover, the prosecution of only one Federal offense, as the addition of "assault" to "theft" results in "robbery," not "assault" and "theft." "Piggyback" jurisdiction, on the other hand, is not similarly circumscribed. The prosecution is for two offenses—with all of the collateral consequences that duly follow. There would be, for example, an incentive to bring multiple count charges to enhance the possibility of conviction and to secure cumulative sentences. Offenses less serious, the same, and more serious could be "piggybacked," and inconsistent verdicts would always be a real possibility. In short, the potential for abuse of "piggyback" jurisdiction is disproportionate to its value to grading as long as there is a viable alternative.

To summarize, compound grading provides a rational and uniform means of grading Federal offenses, for scaling the relative seriousness of misconduct integral to the commission of a "basic" offense, and for achieving a clear proportionality where compound qualities are present in criminal conduct—all without the potential for abuse present in "piggyback" jurisdiction. Finally, unlike the Commission draft, the proposed legislation would leave State courts free to prosecute for State offenses independent of the Federal prosecution.

(5) Procedure.—Experience has shown that the U.S. Supreme Court and its Advisory Committee on the Rules of Criminal procedures are generally, although not always, in a better position to examine and promulgate detailed day to day changes in the rules of criminal procedure. Accordingly, the procedural statutes in present title 18 are directly placed in appropriate order within the present rules. Since the enabling statute on the rules is not changed, but included as proposed section 3-11A1, the Supreme Court, acting through the rulemaking process, would be free, subject to the present approach of congressional oversight, to modify these provisions in accordance with present law.

III. Highlights

I should now like to highlight major policy questions of general concern, which must be resolved in the enactment of a new Federal Criminal Code. This discussion identifies the issue, summarizes present Federal law on the question, notes the proposal of the National Commission of Reform of Federal

Criminal Laws, outlines alternatives and arguments, and finally identifies the resolution proposed in the "Criminal Justice Codification, Revision, and Reform Act of 1973."

Mr. President, an initial word of caution is in order. Each of these issues is important, but none of them should be made more important than the codification itself. (See Testimony of Hon. Edmond G. Brown, vol. I, Hearings at 97). If the Code is held hostage to adoption of a particular point of view on any particular issue, there will be no Code, and the Nation as a whole will suffer. I would hope, therefore, that it will be possible to meet, debate and decide these issues without fracturing the processing of the Code itself.

(1) ABORTION

(a) Present Federal law.—There is no general criminal abortion statute in present title 18. As discussed more fully below in Part (4) (Enclaves Jurisdiction), Federal courts apply local State law under the Assimilated Crimes Statute (18 U.S.C. § 13). In some enclaves, abortions are legal under certain circumstances, while in other they are criminal.

(b) Commission proposal.—There is no criminal abortion statute in the proposed Code. The homicide sections (sections 1601-1603) are phrased in terms of causing the death of another "human being," and human being is defined as "a person who has been born and is alive." (Section 109(p)) There is only a passing discussion of the problem of abortion in the comments to individual sections. See., e.g., Final Report, Comments to Section 209, p. 23. The issue is not as clearly resolved as it might be, but it probably cannot be inferred that the adoption of the Code in its present form would mean the decriminalization of all abortions in Federal enclaves or elsewhere. Consequently, under the assimilated crimes provisions of the Code, the Federal courts would continue to apply State law as to abortions performed in Federal enclaves, but they would apply a sharply lowered penalty scheme.

(c) Alternatives and arguments.—Several basic alternatives exist in drafting a new Code. Abortion under certain circumstances could be explicitly decriminalized. This is the position of a number of groups, particularly among those concerned with the women's rights movement and among people concerned with population control and poverty. They argue that a fetus, particularly in the first months of pregnancy, is not human life. Consequently, the decision to abort or to give birth should be that of the woman and her doctor it is not a community judgment to be governed by the penal law.

On the other hand, abortion could be explicitly criminalized. This would follow the traditional approach in State law. It is also the position of a number of religiously oriented and civil rights groups concerned with human life. They agree that a fetus is a form of human life. Consequently, the decision to abort cannot be left to the woman and her doctor, since the right to life of the fetus must be considered; human life must be protected by the penal law.

Finally, the issue could be left for resolution in each enclave area by the incorporation of local law through the Assimilated Crimes Act approach. The argument that would support this position would be rooted in respect for federalism.

This abortion issue is part of a broader problem of conflict of laws and comity, which is discussed under Enclave Jurisdiction. It raises common issues with drugs, obscenity, and sodomy. Any resolution of the issue should take into consideration these other related questions.

(d) Bill.—There is no criminal abortion section in the proposed Federal Criminal Code. Rather section 1-1A8, Assimilated Offenses, provides for the enforcement and prosecution by the Federal Government of local law in all Federal enclaves and for the imposition of the penalty imposed under local law.

(2) CAPITAL PUNISHMENT

(a) Present Federal law.—The death penalty is an authorized sentence upon conviction under at least ten sections of present law, including murder, treason, rape, air piracy and delivery of defense information to aid a foreign government. [18 U.S.C. § 34 (destruction of motor vehicles or motor vehicle facilities where death results); 18 U.S.C. § 351 (assassination or kidnaping of

Member of Congress); 18 U.S.C. § 794 (gathering or delivering defense information to aid a foreign government); 18 U.S.C. § 1111 (murder in the first degree within the special maritime and territorial jurisdiction of the U.S.); 18 U.S.C. § 1114 (murder of certain officers and employees of the U.S.); 18 U.S.C. § 1716 (causing death of another by mailing injurious articles); 18 U.S.C. § 1751 (Presidential and Vice Presidential murder and kidnaping); 18 U.S.C. § 2031 (rape within the special maritime or territorial jurisdiction of the U.S.); 18 U.S.C. § 2381 (treason); and 49 U.S.C. § 1472(i) (aircraft piracy).]

As drafted, they appear to be unconstitutional under the 1972 decision in *Furman v. Georgia*, 408 U.S. 238 (1972). In addition, there are several other statutes that authorize the death penalty, but each appears to be unconstitutional under *United States v. Jackson*, 390 U.S. 570 (1968), because by permitting the jury and not the court to impose the penalty, they inhibit the exercise of the right to demand a jury trial.

(b) Commission proposal.—Capital punishment would be abolished for all Federal criminal offenses under the proposed code. Section 3601 authorizes life imprisonment or the maximum sentence for a class A felony (30 years) upon conviction of treason or murder, where the court is satisfied that the defendant intended to cause the death of the victim.

A minority of the Commission, however, proposed an alternative approach—one which would retain the death penalty for at least intentional murder or treason. (Sections 3601, 3602, 3603 and 3604) The significant features of the alternate are the adoption of: (i) a bifurcated trial and (ii) standards for imposition. Before the court imposes a death penalty upon a convicted defendant, it would be required to hold separate hearings on the question of life or death and at that hearing evidence normally inadmissible at the criminal trial where the issue was guilt could be introduced by either party (section 3602). The death sentence, moreover, could not be imposed if the defendant was less than 18 years old at the time of the commission of the crime; if the defendant's physical or mental conditions calls for leniency; if in the judge's mind the evidence "does not foreclose all doubt" respecting the defendant's guilt, or if there are other substantial mitigating circumstances (section 3603). Finally, special criteria for mitigating and aggravating circumstances are listed (section 3604). A finding of their presence or absence would guide the imposition of the sentence.

(c) Alternative and arguments.—Testimony was taken by the Subcommittee on capital punishment. The arguments on capital punishment are set out fairly in the Final Report (pp. 463–64) and Volume II of the Working Papers (pp. 1347–76). I need not repeat them here. Assuming, however, the retention of the death penalty, other issues remain. Should it be limited to murder and treason? Or should it be applied to other crimes? How should it be imposed? Should it be discretionary or mandatory? Should standards be set for the exercise of discretion?

The arguments for and against the two-stage trial and standards are reviewed in *McGautha v. California*, 403 U.S. 83 (1971) and *Crampton v. Ohio*, 402 U.S. 183 (1971), which hold that neither is required by the Due Process Clause of the Constitution. In general, those in favor of these procedures argue that they are fairer, since they permit a wider range of materials to be reviewed under appropriate standards. Others suggest that they are an unduly protracted procedure that may, in fact, result in a greater imposition of death sentences.

(d) Bill.—The bill proposes that the death penalty be retained for the most heinous crimes, murder and treason, and sections 1–4E1 and 1–4E2 adopt the two-stage trial model.

It is not my intention now to enter into a full discussion of the implications of *Furman* for the purposes of the Code, but a number of points should be made. First, *Furman* is a per curiam opinion; it merely holds that the "imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." (408 U.S. 239–40) No general opinion was written for the court. Consequently, it has little value as a precedent or as a guide to a legislature in drafting new legislation. Second, it is clear that the Supreme Court has not held that capital punishment may not be imposed in other cases under different circumstances. The two "swing" Justices—Stewart and White—explicitly stated in *Furman* that they had not held the death penalty per se unconstitu-

tional. Rather, they concluded that the death penalty as presently applied and administered in the United States constitutes a violation of the Eighth Amendment. Mr. Justice Stewart objected to its imposition in "so wantonly and freakishly" a manner. He then hinted that a mandatory penalty might avoid this result. See 408 U.S. at 307-08. Mr. Justice White objected to it "as it is presently administered. . . ." (408 U.S. at 312-13.) He felt that—

"The recurring practice of delegating the sentencing authority to the jury and the fact that a jury in *its own discretion* and without violating its trust or any statutory policy may refuse to impose the death penalty no matter what the circumstances of the crime." (408 U.S., at 314) (Emphasis added.)

His hint was that standards to guide discretion might pass constitutional muster.

These aspects of the concurring opinions of Justices Stewart and White were emphasized by the dissent of the Chief Justice. His comments bear quoting at some length. He observed:

"Today the Court has not ruled that capital punishment is *per se* violative of the Eighth Amendment; nor has it ruled that the punishment is barred for any particular class or classes of crimes. The substantially similar concurring opinions of Mr. Justice Stewart and Mr. Justice White, which are necessary to support the judgment setting aside petitioners' sentences, stop short of reaching the ultimate question. The actual scope of the Court's ruling, which I take to be embodied in these concurring opinions, is not entirely clear. This much, however, seems apparent: if the legislatures are to continue to authorize capital punishment for some crimes, juries and judges can no longer be permitted to make the sentencing determination in the same manner they have in the past. . . .

"The critical factor in the concurring opinions of both Mr. Justice Stewart and Mr. Justice White is the infrequency with which the penalty is imposed. This factor is taken not as evidence of society's abhorrence of capital punishment—the inference that petitioners would have the Court draw—but as the earmark of a deteriorated system of sentencing. It is concluded that petitioners' sentences must be set aside, not because the punishment is impermissibly cruel, but because juries and judges have failed to exercise their sentencing discretion in acceptable fashion. . . .

"This novel formulation of Eighth Amendment principles—*albeit* necessary to satisfy the terms of our limited grant of certiorari—does not lie at the heart of these concurring opinions. The decisive grievance of the opinions—not translated into Eighth Amendment terms—is that the present system of discretionary sentencing in capital cases has failed to produce evenhanded justice: the problem is not that too few have been sentenced to die, but that the selection process has followed no rational pattern . . . It is essentially and exclusively a procedural due process argument. . . .

"Since the two pivotal concurring opinions turn on the assumption that the punishment of death is now meted out in a random and unpredictable manner, legislative bodies may seek to bring their laws into compliance with the Court's ruling *by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed*. If such standards can be devised or the crimes more meticulously defined, the result cannot be detrimental." (408 U.S. at 396-401) (Emphasis added.)

Mr. President, the "Criminal Justice Codification, Revision, and Reform Act of 1973" has been drafted to meet the legitimate evils identified by the Supreme Court. The arbitrariness and unfairness to the defendant of the traditional single-stage trial can be, in my judgment, avoided by the adoption of the two-stage trial and the articulation of statutory standards for the imposition of capital punishment. Since sections 1-4E1 and 1-4E2 are carefully and rigorously drafted, they will, I believe, withstand constitutional challenge. Nevertheless, it is my intention to examine the implications of *Furman* and the question of capital punishment in further hearings on the Code.

(3) DRUGS

(a) Present Federal law.—In 1970, the Congress enacted the Comprehensive Drug Abuse Prevention and Control Act (Public Law 91-513). The 1970 Act sets up a complete regulatory scheme together with a series of criminal provi-

sions. Its provisions need not be summarized here, other than to note that it did not decriminalize marijuana, although it did lower its penalty category.

(b) Commission proposal.—While the Congress was processing the 1970 Act, the Commission was simultaneously drafting a comprehensive subchapter on “dangerous, abusable and restricted drugs.” (§ 1821, Classification of Drugs; § 1822, Trafficking in Restricted Drugs; § 1824, Possession Offenses; § 1825, Authorization a Defense under sections 1822 to 1824; § 1826, Federal Jurisdiction Over Drug Offenses; § 1827, Suspended Entry of Judgment; and § 1829, Definitions for sections 1821 to 1829.)

The criminal provisions of the new Drug Act and those of the Code proposed by the Brown commission are not substantially different, with the exception of the question of treatment of marijuana.

Proposed section 1824 (Possession Offenses) declares that: “If the drug is marijuana, the offense is an infraction.” Under the Code, an infraction “means an offense for which a sentence of imprisonment is not authorized” (section 109)]. Present Federal Law makes possession of marijuana a misdemeanor, that is, a criminal offense for which a sentence of imprisonment may be imposed). Alternatively, the Commission proposes that a person is guilty of a class A misdemeanor if, “except as authorized by the regulatory law,” he knowingly possesses a usable quantity of a dangerous or abusable drug.

(c) Alternatives and arguments.—The Commission’s arguments for treating possession of marijuana as an offense, but an offense that would not subject the defendant to imprisonment sanctions, are summarized in the Comment to proposed section 1824:

“Available evidence does not demonstrate significant deleterious effects of marijuana in quantities ordinarily consumed; . . . any risks appear to be significantly lower than those attributable to alcoholic beverages; . . . the social cost of criminalizing a substantial segment of otherwise law abiding citizenry is not justified by the, as yet, undemonstrated harm of marijuana use; and . . . jail penalties for use of marijuana jeopardize the credibility and therefore the deterrent value of our drug laws with respect to other, demonstrably harmful drugs.” (Final Report at 255)

The alternative Commission draft, which would continue to make marijuana possession a misdemeanor, is supported by the arguments that: (1) there is significant evidence which suggests that at least long-term use of marijuana can have harmful physical consequences; (2) infraction penalties are so minimal, especially since many defendants will be “judgment proof” and unable to pay fines, that the Federal Government will in effect have no control over the possession and use of marijuana; (3) the fact that alcohol is uncontrolled and dangerous does not mean that a second such substance should be uncontrolled; (4) the “social costs of misdemeanor sanctions” can be moderated under proposed section 1827 on suspension of proceedings; (5) the credibility of community disapproval would be undermined by too precipitate a reduction of penalties.

(d) Bill.—The bill makes possession of marijuana a misdemeanor. Section 2-9E1(b) (6). It also follows present law in most other respects.

(4) ENCLAVE JURISDICTION

(a) Present Federal law.—Article I § 8(C1. 17) of the Constitution gives Congress jurisdiction over “all places purchased by the consent of the Legislature” of a state—the so-called Federal enclaves, including military reservations, parks, national forests and Federal building complexes. Under 18 U.S.C. § 7, the “special maritime and territorial jurisdiction of the United States” is defined to include ships, airplanes and land reserved or acquired for use of the United States, that is, Federal enclaves. Present 18 U.S.C. § 13, the Assimilated Crimes Statute, provides that whoever commits an act subject to federal jurisdiction under § 7 which has not been made a specific crime by Congress but which “would be punishable if committed or omitted within the jurisdiction of the State” where the enclave is located shall be guilty of a similar Federal offense and subjected to the same punishment as is provided by State law. The effect of this constitutional provision and these two Federal statutes is, in large measure, to incorporate by reference state-criminal law in Federal enclaves.

(b) Commission proposal.—The Commission carries over the definition of

"special maritime and territorial jurisdiction" as § 210 of the proposed Code. The Commission proposes, however, to modify the Assimilated Crimes provisions to: (1) exempt conduct if "it may be inferred that Congress did not intend to extend penal sanctions to such conduct" and (2) limit the maximum punishment that may be imposed for conduct which Congress has not made criminal to that authorized for a Class A misdemeanor under the Code (1 year imprisonment).

(c) Alternatives and arguments.—The present "Assimilated Crimes" provision means that except for matters of "Federal question jurisdiction," the same criminal law applies in State and Federal courts within the same State whenever the Congress has failed to make the particular conduct criminal. The Commission would limit that similarity in cases where it may be "inferred" that Congress chose not to act rather than failed to act and in all cases it would limit the sanctions to a misdemeanor level.

What the first change means is that if Congress elects to decriminalize or treat differently from State law, abortion, drugs, obscenity, sodomy, or similar issues, Federal enclaves in States which do not follow a similar course of action will, to that degree, end up as a "protected havens" or centers for abortion, drugs, obscenity or homosexuals in that State. The implication for abrasive Federal-State relations is obvious.

(d) Bill.—The bill continues the policy of the present law. (§ 1-1A8.) The Federal criminal law should reinforce, not compete, with local and State criminal law.

(5) GUN CONTROL

(a) Present Federal Law.—Under present Federal law, there is no general criminal prohibition against the production, possession of, or trafficking in, handguns or other firearms, and there is no general requirement of registration, but there are sections which:

Prohibit the mailing of handguns (18 U.S.C. § 1715);

Prohibit the receipt, possession, transportation in commerce or affecting commerce of firearms other than shotguns and rifles by felons, mental incompetents, veterans who are other than honorably discharged and former citizens who have renounced their citizenship (Public Law 90-351, 197 (1968));

Prohibit the shipping, transporting or receiving of any firearm or ammunition in interstate commerce except as to Federally licensed importers, manufacturers and dealers. (Public Law 90-618 (1968));

Make it a felony to use a firearm to commit any felony or to carry a firearm during the commission of a felony (18 U.S.C. § 924[c]);

Set tight standards for Federal firearm licenses;

Require that all firearms have serial numbers;

Ban sales of firearms to persons under 18 and persons who are non-residents of the state in which the sale is taking place;

Ban sales of handguns or ammunition to anyone under 21;

Ban importation of firearms except with the approval of the Secretary of the Treasury; and

Make it a crime to possess, receive or transfer a firearm with the intent to use it in crime.

In addition, there is some firearms' legislation outside present title 18: 22 U.S.C. § 1934 (Mutual Security Act); 26 U.S.C. § 5865 (bootlegging); 49 U.S.C. § 1472 (airplane transportation); 36 C.F.R. 31 (possession in National Parks).

(b) Commission proposal—A majority of the Commission voted to recommend that Congress:

(1) Ban the production and possession of, and trafficking in, handguns, with exceptions only for military, police and similar official activities; and

(2) Require registration of all firearms.

These recommendations were not drafted in legislative form.

The full Commission approved and the Draft Code includes four sections which adapt to the Code the firearms provisions of present law. The sections are:

§ 1811. Supplying Firearms, Ammunition, Destructive Devices or Explosives for Criminal Activity;

§ 1812. Illegal Firearms, Ammunition or Explosive Materials Business;

§ 1813. Trafficking In and Receiving Limited-Use Firearms;

§ 1814. Possession of Explosives and Destructive Devices in Buildings.

(c) Alternatives and arguments.—The arguments pro-and-con for firearms registration or the banning of handguns may be outlined. On one hand arguments have been put forth that the number of violent crimes and accidental homicides would be markedly reduced by the national suppression of handguns, which are peculiarly susceptible to criminal activity or use under the heat of an emotional argument or situation; nationwide registration of all firearms would facilitate tracing a firearm that had been found at the scene of a crime.

On the other hand, it is argued that the suppression of handguns will not reduce the amount of violent crime, since criminals will continue to be able to obtain them just as heroin addicts now appear to be able to continue to obtain narcotics. But law-abiding citizens would be without necessary means of self-defense. Further, national suppression of handguns would be largely unenforceable, and to the extent that an attempt would be made to enforce it, would tend one step more toward the creation of a national police force. In addition, a national gun law would violate basic principles of federalism. States should be free to follow their own policy. New York City and Butte, Mont., need to be treated the same. Gun registration is also opposed on the ground that it is a step toward confiscation of firearms, an end which is undesirable for the reasons sketched above as to handguns.

(d) Bill.—The bill incorporates the four sections on firearms and explosives approved by all of the members of the National Commission, as Sections 2-9D2, 2-9D3, 2-9D4, and 2-9D5. It thus carries forward present law without substantial change. Specifically, it does not adopt the handgun recommendation of the Brown Commission.

(6) MENTAL ILLNESS DEFENSE

(a) Present Federal law.—At present, there is no uniform federal law as to the defense of insanity. Neither Congress nor the Supreme Court has set forth a definitive standard or rule. In the 3d Circuit, for example, the defense is available if the defendant lacked capacity to conform his conduct to the requirements of the law violated, *United States v. Currens*, 290 F. 2d 751 (3rd Cir. 1961). In the 2d, 6th, 7th, 9th and 10th Circuits the so-called Model Penal Code formulation is followed: it requires "substantial capacity to appreciate and conform." See Model Penal Codes § 4.01(1) (1962).

(b) Commission proposal.—The Commission recommends the adoption of the insanity defense proposed by the American Law Institute in the Model Penal Code (1962). Proposed § 503 declares that the defendant is not responsible for criminal conduct if at the time "as a result of mental disease or defect he lacks substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." It is also specifically provided that the sociopath (one with "an abnormality manifested only by repeated criminal or otherwise antisocial conduct") is not a person with a "mental disease or defect" within the meaning of this section.

(c) Alternatives and arguments.—The range of alternatives is wide—from the M'Naghten rule, to the irresistible impulse test, to the various rules in use today in the Federal courts. A number of members of the Commission, for example, preferred the following test:

"Mental disease or mental defect is a defense to a criminal charge only if it negates the culpability required as an element of the offense charged. In any prosecution for an offense, evidence of mental disease or mental defect of the defendant may be admitted whenever it is relevant to negate the culpability required as an element of the offense."

Another possibility is the alternative put forward in the draft of the Model Penal Code, under which the insanity defense is available if the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law "is so substantially impaired that he cannot justly be held responsible." Model Penal Code, Tentative Draft No. 4, comment at 27, 157. It is arguable that when a psychiatrist, court or jury makes a decision on whether a defendant is not guilty by reason of insanity what they are really doing is making a moral judgment: was the defendant so deranged that it seems unreasonable or unjust to hold him criminally responsible? If that is so, ask the question directly.

(d) Bill.—The bill adopts with minor language changes, the formulation of the American Law Institute and the National Commission as Section 1-3C2.

(7) OBSCENITY

(a) Present Federal law.—There are five obscenity sections in present Title 18:

18 U.S.C. § 1461 (mailing obscene matter); § 1462 (importation or transportation of obscene matters); § 1463 (mailing indecent matter on wrappers or envelopes); § 1464 (broadcasting obscene language); § 1465 (transportation of obscene matters for sale or distribution).

(b) Commission proposal.—The proposed Code would consolidate the present offenses into one new section (§ 1851—Disseminating Obscene Material). The word “disseminate”, defined to mean “sell, lease, advertise, broadcast, exhibit or distribute,” makes the consolidation possible. The offense is also committed if the defendant “produces, transports, or sends obscene material with intent that it be disseminated.”

The Final Report did not define the term “obscene” or “obscenity”. The Commission expressed the view that there is too much constitutional-law confusion and difficulty.

Federal criminal jurisdiction would rest on three bases:

(1) Committed within the special maritime and territorial jurisdiction of the United States;

(2) Use of the mails or a facility in interstate or foreign commerce; and

(3) The property is moved across a State or the boundary of the United States (§§ 201[a], [e], [j]).

The crime is a felony (Class C) only if the government can show that “dissemination is carried on in reckless disregard of risk of exposure to children under eighteen or to persons who had no opportunity to avoid exposure. Otherwise, it is a Class A misdemeanor.

(c) Alternatives and arguments. The Commission also offered alternatives:

(1) There should be a defense to prosecution which would effectively legalize the dissemination of obscene materials to adults; alternative § 1851(2)(c) would make it a defense that the dissemination was “carried on in such a manner as, in fact, to minimize risk of exposure to children under eighteen. . .”

(2) The offense should in all cases be a Class A misdemeanor.

At least one additional alternative was considered by the Commission. It would broaden the definition of obscenity to include violence as well as sex and isolate the evaluative aspects of the present constitutional definition and make them jury questions keyed to local community standards.

(d) Bill.—The bill proposes a strong, consolidated obscenity statute. Section 2-9F5. The section contains a new definition of obscenity which meets, in my judgment, the constitutional requirements laid down by the Supreme Court. Obscenity would become a jury question keyed to local community standards.

(8) PENTAGON PAPERS

(a) Present Federal law.—Present Federal law treats unlawful dissemination of confidential governmental documents in a number of separate places. In broad outline, present law:

Prohibits the “communication” of national defense information to a person not entitled to it (18 U.S.C. § 793);

Prohibits the “communication” or “publication” of the disposition of the armed forces in time of war (18 U.S.C. § 794(b));

Prohibits the transfer or “publication” of photos of defense installations (18 U.S.C. § 797); and

Prohibits the transfer or “publication” of cryptography or communication of intelligence information (18 U.S.C. § 798).

Other limited provisions are found in other titles of the United States Code. See, e.g., 50 U.S.C. § 783(b) (prohibits any officer or employee of the United States to communicate classified data to a representative of a foreign power or a member of any Communist organization).

See generally the concurring opinion of Mr. Justice White in *New York Times v. United States*, 403 U.S. 713, 736-39 (1970).

(b) Commission proposal.—The Commission would basically codify present law into three sections;

Mishandling National Security Information (§ 1113);
 Misuse of Classified Communications Information (§ 1114); and
 Communication of Classified Information by Public Servant or a Former
 Public Servant (§ 1115).

The proposed section 1113 would probably not extend to "publication." Proposed § 1115 would explicitly extend to "publication." Proposed § 1115 would probably not extend to "publication," unless it was shown to be a means of communication with a foreign power or a communist. The Commission, according to the comments to § 1115, considered and rejected broader prohibition of "communication" or "publication" of classified information.

(c) Alternative and arguments.—Testimony was taken before the Subcommittee which showed that there are honest and deeply held differences of opinion not only on what the law is, but what it ought to be. The basic alternative to present law or the Commission proposal is a broader prohibition. The argument for it is in essence the Government's underlying position in the *New York Times* case; the national security interest demands, if not prior restraint, at least subsequent prosecution. The contrary argument is essentially that of Mr. Justice Black. The First Amendment means "no law"—period. The contrary argument, by the same token, also calls into question the possible scope of present law.

However these provisions are drafted in this bill—it attempts no more than a restatement of present law—I know that my cosponsors and I will want to look into this question further as legislative hearings progress.

(d) Bill.—The bill attempts to maintain current law. (See Section 2-5B8 and the definitions "communications Information" and "national defense information" in section 2-5A1.) This is done only to serve as a starting point for further discussion.

(9) SODOMY

(a) Present Federal law.—There are at present no Federal criminal statutes in the "sex crimes" area, except for rape and "statutory rape." Homosexual conduct in a Federal enclave is subject to the law of the State, under the Assimilated Crimes Act.

(b) Commission proposal.—The Commission drafted a complete set of sex-crimes provisions (§§ 1641-1650), but the list does not include a section on Sodomy, that is, deviated sexual intercourse between adults. High penalties are imposed for homosexual rape (§ 1643—Aggravated involuntary Sodomy) and "statutory" homosexual rape (§ 1644—Involuntary Sodomy), but consensual conduct between adults is not made criminal. According to II Working Papers 872: "Private acts of sexual deviation between consenting adults (except for defined situations where unfair advantage is taken) are not declared criminal under these proposed provisions."

(c) Alternatives and arguments.—The argument that the government should not concern itself with sexual activity by adults has been stated elsewhere. It need not be repeated here.

The Commission also argued the need for a general Federal rule in these terms: "Given the frequency and necessity of travel by Federal personnel and others from one Federal enclave to another, in a different part of the country, it might be well to formulate once more a complete set of statutes on sex crimes, rather than subject persons to very different criminal laws as they enter new Federal enclaves." III Working Papers, 868. As noted above, the problem with this approach to the formulation of the law consensual homosexual conduct and Assimilated Crimes is that Federal enclaves could become centers or havens for homosexuals seeking refuge from State laws.

(d) Bill.—The bill incorporates sodomy by force (which is homosexual rape) into section 2-7E1, Rape. Sodomy which involves taking advantage of another's incapacity or youthful age or which involves abuse of position or use of fraud is incorporated in section 2-7E2, Statutory Rape. Otherwise, the bill would incorporate State law and its penalty structure by reference.

(10) STANDARDS VERSUS RULES: TREATMENT OF DEFENSE OF PERSON AND PROPERTY

(a) Present Federal law.—The present Federal law on self-defense, defense of others, defense of property and premises, use of force, use of deadly force, and crime prevention is case law. [(See e.g., *Brown v. United States*, 256 U.S.

335, 343 (1921) (Use of force to repel knife attack) ("Detached reflection cannot be expected in the presence of an uplifted knife").]

(b) Commission proposal.—The Commission proposed that the rules on justification and excuse be codified as detailed precepts "so that Congress may correct some unfortunate rules of the uncodified law as well as settle some questions which are cloudy in existing law." I Working Papers 261. The Commission drafted detailed and specific rules: § 603 (Self-Defense); § 604 (Defense of Others); § 605 (Use of Force by Persons with Parental, Custodial or Similar Responsibilities); § 606 (Use of Force in Defense of Premises and Property); and § 607 (Limits on the Use of Force; Excessive Force; Deadly Force).

(c) Alternative and arguments.—As voiced in testimony before the Subcommittee, a principal concern about the "defense" sections in the Draft Code is that they are so specific and detailed as to be unworkable, and they would virtually foreclose further case-by-case development by the judiciary in areas that have traditionally been viewed as judicial. Moreover, it is arguable that nationwide rules may not be equally appropriate in all areas of the country. For example, it is necessary that the rules on retreating or not retreating before using deadly force be the same in New York City and rural Texas?

These arguments are well stated by a European authority in an essay comparing the Study Draft of the Proposed Federal Criminal Code with European Penal Codes:

"One cannot but be struck by the difference in drafting techniques between European Codes and the Study Draft on this subject. European Codes tend to deal with the subject in short provisions in general terms, whereas the Study Draft has very detailed provisions, dealing separately with . . . [these questions]. The provisions of the German Code . . . on self-defense (including defense of others and defense of property), consists of thirty words only. . . . I note these differences without drawing any conclusions. For the person engaged in defense of himself or others I do not think a detailed statutory regulation gives more guidance than a provision framed in general terms, leaving more to sound judgment and common sense." (III Working Papers 460 (Professor Andaneas).)

Similar observations were offered at the 1971 Hearings of the Subcommittee by the former director of the Connecticut criminal code revision project: "The new Federal Code attempts to cover the field. We . . . were somewhat more modest . . . for two reasons. First, we had the realization that if we tried to cover the field we may have left something out. The second was that we felt that we were not omnipotent in our wisdom. We felt that this body of law had always been developed by the case method, that there should be some room left for judicial flexibility and ingenuity." (*Hearings*, Pt. II, p. 577.) This argument for the use of standards rather than rules reflects the approach of Dean Pound (II Jurisprudence, pp. 124-28 (1959). ("Note the element of fairness or reasonableness in standards. This is a source of difficulty. As has been said, there is no precept defining what is reasonable and it would not be reasonable to attempt to formulate one."))

On the other hand, detailed rules such as the proposed Code of the Brown Commission recommends, might reduce the amount of appellate court litigation on jury instructions, or they might make it easier to reform what the Commission calls the "chaotic" state of Federal law on these subjects. The probability that detailed rules once enacted into law will become "frozen" could well be termed the lesser of two evils.

(d) *Bill*.—An effort has been made to draft the defenses in terms of general standards which can be applied, construed, and developed by the courts consistent with present case law rather than to lay down a detailed book of rules which would be difficult to amend. (See Section 1-3C4.)

IV. Significant Features

In addition to these major policy questions, I should like to highlight several other features of the bill, which are new to Federal criminal law.

West Germany and the Scandinavian countries have an ingenious system of criminal fines, generally known as the "day-fine" system. Under it, the sentencing judge fines the convicted defendant for a period of time consistent with the seriousness and nature of the offense committed. Once the duration of the

fine is set (e.g., 120 days), a daily fine is fixed based upon the defendant's ability to pay. The total amount due in penalty is the number of days times the daily amount. This method, which is introduced in section 1-4C1, will give Federal judges greater flexibility in imposing fines that reflect both the nature and character of the offense and the capacity of the offender or his ability to pay.

I am looking forward to testing the viability of this concept in the coming legislative hearings.

The fine as a sanction for violation of Federal criminal law today may not be as effective as it could be as a sanction, except as to corporation defendants. The reason, of course, is that many fines are never collected. The bill contains a provision (section 3-10A4) which would turn over the responsibility for collecting and enforcing fines levied by Federal courts to the Internal Revenue Service. Fines would also be treated in the same way as tax liens.

I am also looking forward to testing this idea in the hearings we will hold on this measure.

The United States Board of Parole is at present deluged with 17,000 cases per year to be decided by a single board. Dissatisfaction with the parole system is widespread. Many have come to recognize that reform in this area is overdue. In this connection, the Subcommittee has attempted to work closely with the Board of Parole itself and the Subcommittee on National Penitentiaries, which is chaired by the distinguished Senator from North Dakota (Mr. Burdick). The measure which we have introduced incorporates major features of Senator Burdick's bill, S. 3993 of the 92d Congress, which was designed to create a system of regional parole boards. (Section 3-12F1.)

I am looking forward to working out these ideas as we proceed.

The monumental task begun by the National Commission, and which now faces the Congress, is a task that requires constant and diligent study. There is a need, in my judgment, for a permanent body to oversee the operation of the Federal Criminal Code, once it goes into effect, and to make recommendations for improvement from time to time. The bill proposes the creation of a "Criminal Law Reform Commission" to do just that. Sections 3-13C1 through 3-13C6).

V. Conclusions

Mr. President, all history teaches us that civilized society presupposes peace and good order, security of social institutions, security of general morals and the conservation and intelligent use of social resources. At the same time, it teaches us that, to maintain a civilized society, government must protect individual initiative, which is the basis of social and economic progress; government must protect and preserve freedom of criticism, which is necessary for political progress; and government must maintain unrestricted intellectual activity, which is a prerequisite to cultural development, diversity and individuality. Above all, history demands that government insure that each citizen be able to live a material, moral and social life as a respected human being.

Dean Roscoe Pound has reminded us that in many periods of history these various demands on the law have been seen as opposed to one another. (R. Pound, *Criminal Justice in the American City*, 18-19 (1922). He observed:

"For historical reasons this difficulty has taken the form of a condition of internal opposition in criminal law . . . As a result, there has been a continual movement back and forth between an extreme solicitude for general security, leading to a minimum of regard for the individual accused . . . and at the other extreme excessive solicitude for the . . . individual . . . , leading to a minimum of regard for the general security . . ." (*Id.* at 19.)

Mr. President, in my judgment, we are today just beginning to move out of one such period of extreme solicitude for the accused individual. But criminal law and procedures today tip the scale too far away from the best interests and the full protection of society. On making this turn, however, two difficulties confront us. On the one hand, there are those who will resist any change that would make the administration of justice more effective. To them I would cite the wisdom of Edmund Burke, who remarked to the House of Commons on the issue of electoral reform in 1780:

"Consider the wisdom of a timely reform. Early reformatations are amicable arrangements with a friend in power; late reformatations are terms imposed upon a conquered enemy; early reformatations are made in cool blood; late ref-

ormations are made under a state of inflammation. In that state of things the people behold in government nothing that is respectable. They see the abuse, and they will see nothing else. They fall into the temper of a furious populace provoked at the disorder of a house of ill fame; they never attempt to correct or regulate; they go to work by the shortest way; they abate the nuisance, they pull down the house." (*Edmund Burke: Selected Writings and Speeches*, 278 (1963, P. Stanlis ed.))

Our people today are restless with the administration of Justice, Federal and State. Reform is now timely. If we delay reform too long, we run the real risk that the price of delayed reform may be that the framework of civil liberty and federalism embodied in our Constitution and Bill of Rights will be condemned and demolished by those seeking to achieve only efficiency in the operation of our system of criminal justice. We cannot permit that to happen.

Mr. President, we must recognize that there are those who would adopt any change that might promise relief from the ills that beset our system of criminal justice. Expediency, not sound judgment, is all that seems to occupy their minds. To them I would recall the words of Dean Pound:

"[I]n criminal law, as everywhere else in law, the problem is one of compromise; of balancing conflicting interests and of securing as much as may be with the least sacrifice to other interests." (R. Pound, *Criminal Justice in the American City*, 18 (1922)).

In my judgment, however, we can enact a new Code without sacrificing either our liberty or our security. The task will not be easy; the road will be hard. But with a spirit of good will, compromise, and cooperation on the part of all, it can be done.

I, for one, welcome the challenge.

Mr. President, I ask unanimous consent to have printed in the Record at this point the following exhibits:

(1) A section-by-section highlight of the proposed Code.

(2) A series of comparison tables between present title 18, the recommendations of the Brown Commission and the proposed Code.

There being no objection, the material was ordered to be printed in the Record, as follows:

EXHIBIT I

Section-by-Section Highlights

PART I—GENERAL PART

§ 1-A1. Title

The present Title 18 is entitled 'Crimes and Criminal Procedure.' In the years following enactment of the Act of June 29, 1940, c. 445, 54 Stat. 688, authorizing the Supreme Court of the United States to promulgate rules of criminal procedures, most of the procedural sections of Title 18 have become rules of court. The remaining procedural sections will now be transferred to the Rules and the new proposed title is 'Federal Criminal Code.' The word Code indicates that it is the intent that this be an integrated, systematic, and consistent body of law covering general principles (Part I), specific offenses (Part II), and administration (Part III). The word Criminal is used to mean all segments of the criminal justice system of the government of the United States: law enforcement, courts, and corrections.

§ 1-A2. General purposes

This section sets forth the basic focus and purposes of the Code, with the understanding that its provisions will be construed by the courts to achieve these objectives. These objectives recognize the multi-purpose and inclusive character of any modern code. See, e.g., J. Hall, *Science Common Sense and Criminal Law Reform* pp. 21-22, 1963 (John F. Murray Endowment Lecture). They also make it explicit that its objectives must be sought 'in the context of a federal system.' Finally, the value system the code embodies is qualified as 'public' to distinguish it clearly from 'private' values not shared by all or felt not to be a matter for political action, i.e., religion under the first amendment.

§ 1-AA. Principle of legality; rule of construction

The basic principle of legality, that a person sought not to be found guilty unless his conduct and its accompanying culpability is contrary to law, is declared in a number of foreign criminal codes. The principle is included so

that there may be no question but that it is part of the Code. See generally J. Hall, *General Principles of Criminal Law* pp. 27-69 (1960).

This section also makes it explicit that each provision shall be "construed . . . as a whole according to the fair import of its terms." It is impossible in drafting to cover literally all conceivable applications of the law, and efforts to do so in the past have created a maze of criminal statutes unintelligible and indecipherable. "Fair import" construction permits the Code to be intelligible, while protecting the public against those who would seek to exploit unintended gaps in the law.

§ 1-1A4. *General definitions*

Words and phrases that are used in more than one chapter of the Code and for which a statutory definition is necessary or desirable are defined in this section. Generally, when a word or phrase is used in only one chapter, it is defined in the first section in that chapter; when a word or phrase that needs definition is used only in one or two sections, it is there defined.

Comments concerning the specific definitions in this section will be found in the comment and analysis of the section in which the term or phrase has its principal use, unless it is essentially self-explanatory.

§ 1-1A5. *Classification of offenses*

This section established seven categories for all offenses in Federal penal law. It has been estimated that there are 65 to 75 categories in the present United States Code. [Comment to § 3002. Final Report, p. 227].

Under this classificatory system, there are five grades of felonies. The lowest, the Class E felony, subjects the convicted defendant to a potential imprisonment of up to one year. § 1-4B1(c). The Class D felony carries a maximum prison term of 3 years in the ordinary situation or 6 years if the defendant is a dangerous special offender. §§ 1-4B1(b), (a), 1-4B2. The Class C felony carries a maximum prison term of 5 years in the ordinary situation or 10 years if the defendant is a dangerous special offender. The Class B felony carries a maximum prison term of 10 years or 20 years if the defendant is a dangerous special offender. The Class A felony carries a maximum prison term of 20 years or 30 years if the defendant is a dangerous special offender; certain Class A felonies, however, may subject the convicted defendant to a sentence of death. The misdemeanor, which is not subdivided into classes, carries a maximum prison term of 6 months, a change from present law (18 U.S.C. § 1 (less than 1 year)); prosecutions for misdemeanor offenses may be brought before a magistrate and there is no constitutional requirement that there be a jury trial. *Duncan v. Louisiana*, 391 U.S. 145 (1969). The violation carries a maximum prison term of 30 days § 1-4B1(c).

In addition to the 7-grade, felony, misdemeanor, violation classification system, the Code employs a concept termed "compound offense," in conjunction with certain of the specific offenses in Part II, for example, under the armed robbery section, if one of the designated "compound offenses" is committed "as an integral part of, including immediate flight from, the commission" of a bank robbery, the defendant may be tried and convicted in Federal court of the compound offense. (§ 2-8D1). In that situation, if the defendant murders a guard, for example, he may be prosecuted for robbery-murder in the course of the same proceeding and convicted if all of the elements of the offense of murder (§ 2-7B1) or all of the elements of a lesser included offense to murder (§ 2-7B1(b)) are provided by the government. Upon conviction, according to the subsection on "compound grading" to the section on armed robbery (§ 2-8D1), the defendant may be convicted of a Class A felony. Absent this compound offense, armed robbery is punishable only as a Class B felony. Note, too, that in such an "armed robbery-murder" prosecution if murder were not shown, armed robbery would be lesser included offense to "armed robbery-murder" since it would be a "lesser-grade" of the same offense. See § 1-1A4(38).

§ 1-1A6. *Territorial jurisdiction*

Since the general provisions (Part I) are intended to apply in all Federal prosecutions, the exceptions, if any will be stated explicitly.

Subsection (d) contemplates a situation in which the offense charged has a jurisdictional base which an included offense does not have.

Subsection (e) establishes the rules for jurisdiction over the offenses of criminal attempt, criminal solicitation and criminal conspiracy.

Subsection (f) provides for jurisdiction over a compound offense.

Subsection (g) sets forth as a rule of general applicability that the existence of Federal criminal jurisdiction shall not, "prevent any state or local government from exercising jurisdiction to enforce its own laws applicable to the conduct in question." Where preemption is intended, it is stated explicitly.

§ 1-1A7. *Extraterritorial jurisdiction*

Hitherto the United States has declined to assert the full international criminal jurisdiction permitted to it as a sovereign nation under international law.

This section is intended to remedy that omission and assert extraterritorial applicability of the Code to the full extent, consistently with the law and jurisprudence of other nations. [See Hearings, Part III-C.]

§ 1-1A8. *Assimilated offenses*

This section substantially continues the policy expressed in present 18 U.S.C. § 13, the Assimilated Crimes Act.

The section does not accept the proposal of the National Commission [§ 209, Final Report p. 23] which would assimilate state offenses committed in Federal enclaves but would reduce the authorized sentence for such offenses if greater than 1 year imprisonment to no more than 1 year imprisonment regardless of the authorized sentence under state law and which would decriminalize or immunize conduct in Federal enclaves "if, having regard to federal legislation as to the conduct constituting the type of offense and the failure of Congress to penalize the specific conduct in question, it may be inferred that Congress did not intend to extend penal sanctions to such conduct."

The position adopted appears best suited to the encouragement of harmonious federal-state relations in the criminal justice field. [See generally Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the State. Jurisdiction over Federal Areas Within the States, Part I (1956).]

§ 1-2A1. *Culpability*

This section defines the kinds of *mens rea* or culpability for Federal offense in the code and elsewhere and it sets forth general rules governing the requirement of culpability.

Subsection (a) defines "culpably" in terms of the four possible culpable mental states recognized and sets forth the four states of mind. "Intentionally" imports purpose or objective. "Knowingly" means the person "is aware of the quality of his conduct" without such conduct necessarily being his "conscious objective," as is the case with intentionally. "Recklessly" requires awareness of and disregard of a risk: the "gross deviation" phrase makes clear that the meaning of recklessness in the Code is not the same as recklessness in the law of torts. "Criminal negligence", by contrast with recklessness, involves simply a failure to be aware of a risk, although that failure must likewise involve a "gross deviation" from the standard of care that a reasonable person would observe in his situation.

Subsection (b) requires proof of the relevant culpability requirement in each prosecution, subject to exceptions, as to each "element of the offense." The phrase "statute or section" is included to make clear the application of these provisions both inside and outside the Code. "Element of an offense" is defined in § 1-1A4(23) to mean "as specified in the definition of the offense or its grading, (i) the conduct, (ii) the attendant circumstances, (iii) the culpability, and (iv) the result." Grading factors and jurisdiction are not included in the definition and hence to do not require culpability. Culpability must be established as to each of the elements unless "the statute provides that a person may be guilty without culpability as to those elements", the section declares that the offense is "a violation", or "on intent to impose liability without culpability as to those elements is otherwise present."

Subsection (c) emphasizes that culpability is not required as to a fact which is a basis for Federal jurisdiction or grading, as to an element "as to which it is expressly stated that it must 'in fact, exist', or as, outside the Code, to the legal result that the conduct constitutes an offense or is prohibited by law. The latter obviates any contention that the defendant must know that his conduct is criminal. Subsection (d) provides that if the culpability

required is intentionally or knowingly it is sufficient to prove that the defendant acted recklessly as to an attendant circumstance. Also, a lower kind of culpability includes all higher kinds.

The simpler scheme of culpability here proposed responds to hearing testimony that expressed dissatisfaction with the Brown Commission's recommendations.

§ 1-2A2. *Causal relationships between conduct and result*

This section, by only stating a "but for" requirement for causation, leaves the matter of causation largely to judicial development in terms of the culpability requirement. Once 'but for' is established, liability follows *men rea*.

In foreign countries, legislatures have normally refrained from attempting to define the causal relation. [Hearings Part III-C.] "When questions of causation arise they will most often be questions of a factual nature, pertaining to the competence of the expert. But, although infrequent in practice, the legal questions may be very complex and not easily solved through one short formula." [Andenaes, "Comment Comparing Study Draft of Proposed New Federal Criminal Code to European Penal Code," III Working Papers 1456. (1971)] In testimony prepared for the Subcommittee on Criminal Laws and Procedures, the Association of the Bar of the City of New York advised against any attempt to codify the law of causation: "The problem of instructing a jury under this type of language [commission draft § 305] may be formidable for trial judges. We believe that this is matter best left to judicial development, and that codification should not be attempted."

§ 1-2A3. *Criminal solicitation*

A number of statutes in present Title 18 provide criminal penalties for soliciting the commission of substantive offenses, there is no general prohibition against solicitation. This section, which applies to all the offenses in the Special Part of the Code except as otherwise provided, makes such specific references unnecessary.

The section makes it explicit that it is not possible to "attempt" a "solicitation". Completed solicitation is as far back into inchoate criminality as the Code reaches. If the person solicited agrees and conduct is committed, the person may be guilty under the section on criminal attempt (§ 1-2A4) or criminal conspiracy (§ 1-2A5).

This section penalizes the solicitation whether or not the person solicited agreed or acted where the conduct solicited in fact constitutes a crime. (Under § 1-1A4(16) "crime" means a misdemeanor or a felony; the broader term, "offense" includes a violation as well—§ 1-1A4(47)).

§ 1-2A4. *Criminal attempt*

This section establishes a general provision on attempt which is applicable to every federal crime, except as specifically excluded in the section on a specific offense [e.g. § 2-8D5, Scheme to Defraud]. This section eliminates the need for special attempt statutes (sections) or subsections in the Special Part, the approach used in present Title 18 [e.g. 18 U.S.C. § 1113. Attempt to commit murder or manslaughter].

This section would deal uniformly with questions of renunciation, impossibility, corroboration, penalty, incapacity. It sets standards for intent and conduct, and follows the example of the Model Penal Code (M.P.C. § 5.01(2)) in giving illustrations of conduct which may be sufficiently corroborative of a person's intent to engage in prohibited conduct to constitute a "substantial step" for purposes of criminal attempt.

As in solicitation above, it makes it explicit that it is not possible to "solicit" an "attempt".

§ 1-2A5. *Criminal conspiracy*

This section codifies, neither expanding nor contracting, the present Federal law on conspiracy in the form of a general statute applicable to all Special Part offenses, except where specifically excluded. This attempt to restrict the offense of conspiracy in the National Commission draft (§ 1004) could have, according to testimony before the subcommittee, a deleterious consequence on law enforcement in the organized crime, and antitrust fields and does not appear justified.

"Attempt to conspire" is expressly excluded. Solicitation to conspire would be permitted.

§ 1-2A6. *Complicity*

This section basically restates present 18 U.S.C. § 2, with changes to codify case law. Subsection (a)(3) codifies the doctrine of *Pinkerton v. United States*, 328 U.S. 640 (1946), making a co-conspirator guilty of each specific offense committed in furtherance of the criminal conspiracy and as a reasonably foreseeable consequence of the conspiracy.

The proposal of the Commission to create a separate offense of Criminal Facilitation (FR § 1002) has not been accepted. If a person engages in conduct which aids another person to commit an offense, with knowledge that conduct constituting, in fact, an offense was to be committed, the person is in complicity under this section and may be found guilty of the offense.

§ 1-2A7. *Organization criminal liability*

This section sets forth those circumstances under which an organization (defined in § 1-1A4(51)) may be criminally liable for offenses committed by its agents. It restates present law. The suggestions of the commission both to narrow the scope of present law and impose liability, under the alternative draft formulation, based on a standard of "reckless toleration" (§ 402), have been rejected. Both received sharp criticism in the Hearings. The Commission draft on this point, § 402, was also restricted to "corporate" criminal liability. Organizations and organized in the corporate form, such as business trusts or labor unions, should be criminally liable to the same extent as the corporation.

The fact that the organization cannot, upon conviction, be sentenced to imprisonment because of its nature should not lead to an exemption of organizations from criminal liability since other sanctions may be quite as efficacious as a deterrent and to promote rehabilitation.

§ 1-2A8. *Personal criminal liability for conduct on behalf of organization*

This section is the converse of § 1-2A7. It deals with the criminal liability of agents of an organization and makes explicit that the human perpetrator is not absolved from guilt by the fact that an organization is criminally liable for the offense.

§ 1-3A1. *General principles*

Chapter 3 partially codifies the general bars to prosecution and defenses to criminal liability.

Subsection (a) indicates that where a particular defense is codified, that provision controls. For example, a court would not be free to use its own definition of the insanity defense as well as that set out in the code.

Subsection (b), which states that the defenses in this chapter "are not exclusive," is intended to make clear that it is not the intent of Congress to foreclose through the codification further judicial development of other defenses to criminal liability.

Subsection (c) declares that the defenses in this chapter are available to a Federal public servant [public servant is defined in § 1-104(58)] or a person acting at his direction based "on acts performed in the course of the public servant's official duties, under sections 1-3C3 (Execution of Public Duty) and 1-3A4 (Defense of Person, Property or Prevention of Criminal Conduct)." It is intended that these defenses should be available to public servants in any criminal proceeding, not merely in a Federal prosecution. Other defenses, such as "insanity" would, of course, continue to be defined by local law.

§ 1-3B1. *Time limitations*

Subsection (b) of this section derives from present 18 U.S.C. § 3281.

Subsection (c) of this section derives from present 18 U.S.C. §§ 3282, 3283, 3284, 3286, 3291.

Subsection (d) of this section derives from present 18 U.S.C. §§ 3288, 3289.

Subsection (e) of this section derives from present 18 U.S.C. § 3290.

Subsection (h) of this section derives from present 18 U.S.C. § 3287.

Subsection (i) of this section derives from present 18 U.S.C. §§ 3284, 3285.

Provisions of the Brown Commission draft calling for special limitations applicable after special hearings have been rejected because of sharing criticism in the hearings. It was felt that they would be too complex and time consuming to be workable.

§ 1-3B2. *Entrapment*

Entrapment as a bar to prosecution is here reduced to statutory form for the first time. As a bar to prosecution, entrapment must be determined by the court prior to trial. The need for the section is obvious: under no rationale of the criminal law is it proper for the police to encourage the commission of crimes that would not otherwise be committed in order thereby to make arrests and obtain convictions.

§ 1-3B3. *Immaturity*

This section codifies present Federal practice which eschews prosecution as adults of persons less than 16 years of age at the time of commission of the prohibited conduct. For the Code provisions on juvenile delinquency see Subchapter B of Chapter 13, sections 3-13B1 through 3-13B7.

Since immaturity is a bar to prosecution, the government need not introduce any evidence as to defendants age unless the issue has been raised.

§ 1-3C1. *Intoxication*

This section is not strictly necessary, since any factor, condition, or state which negates an element of an offense (as defined in § 1-1A4(23)) defeats the prosecution, which has the burden of proof. If the defendant is an alcoholic but his condition does not negate an element of the offense, the court upon sentencing may take his condition into account and sentence him to a treatment facility rather than a prison or order him placed on probation on condition that he undergo treatment for the disease. See §§ 1-4A1(c), 1-4D2(b) (3) and (13), 3-12C2(c).

§ 1-3C2. *Mental illness or defect*

At present there is no Federal statute on the defense of insanity. The defense has been defined by decisional law which varies from circuit to circuit.

This section establishes a uniform Federal position on the circumstances when mental illness or defect is a defense. The test employed is a variation of the Penal Code test [Model Penal Code § 4.01].

§ 1-3C3. *Execution of public duty*

Subsection (a) is a general provision which incorporates many Federal laws, which permit public servants to act in certain ways in the execution of their official duties. Under this provision, for example, it would be a defense to a charge of theft that the defendant was a marshal levying execution on a shipment of goods in interstate commerce. Wire-tapping under court order would also be excluded from the prohibition against the interception of private communications. Other illustrations could be multiplied.

Subsection (b) protects the ordinary citizen who responds to a specific request for assistance from a public servant, except where the citizen "acts in reckless disregard of the risk that the conduct was not required or authorized by law."

§ 1-3C4. *Defense of person, property or prevention of criminal conduct*

This section, in contrast with proposed sections 603, 604, 605, 606, and 607 of the draft prepared by the Brown Commission, sets standards but does not attempt to define detailed rules for the defense of self-defense, defense of others, defense of property, crime prevention, use of force, and use of deadly force. "For the person engaged in defense of himself or others . . . a detailed statutory regulation [probably does not] give any more guidance than a provision framed in general terms, leaving more to sound judgment and common sense." [Andenaes, III Working Papers at 1460] In general, foreign criminal codes do not attempt to prescribe detailed rules of permitted behavior for emergency situations such as self-defense and defense of others. In testimony prepared for the Subcommittee on Criminal Laws and Procedures, the Special Committee on the Proposed New Federal Criminal Law of the Association of the Bar of the City of New York declared:

"Our analysis of these provisions leads us to the conclusion that these defenses are not a subject appropriate for codification . . . The defenses themselves, as they have developed through decisional law, have many nuances and are in a constant process of development. We believe that any effort to freeze them in statutory language will lead to ambiguity and confusion and impede the process of adaptation and change necessary in this field." (Report, p. 15)

The basic standard under the proposed code for conduct in defense of person, property or otherwise is that such conduct be believed in "good faith" to be "necessary" and to be "reasonable". The "good faith" element means it must be a real belief honestly held, although the belief need not be one that a reasonable man would have under the circumstances. The "reasonableness" element qualifies the conduct objectivity in light of the good faith subjective belief. In addition, the use of force must always be "proportionate." Deadly force should not, for example, be employed to prevent the theft of a chicken. Finally, provision is made to excuse "understandable" mistakes based on "fear" and a "reasonable man" test. See § 608(2) of the final report; *Brown v. United States*, 256 U.S. 335 (1921). Force may also be used where reasonable care is exercised in its use and the defendant stands in an enumerated special relation to the other person.

§ 1-3C5. *Ignorance or mistake of fact*

Strictly speaking, this section states only a truism. It is included for purposes of clarity. It permits a defense of mistake of fact in two situations: where a good faith mistake "negates the kind of culpability required for commission of the offense" or where the defendant believes that his conduct is "necessary" for any of the purposes which would establish any other defense to criminal liability specified in Chapter 3 of the Code.

As above the mistake must be in "good faith," i.e., honest; it need not be "reasonable."

§ 1-3C6. *Ignorance or mistake of law*

Subsection (a) provides a limited defense of mistake of law where a good faith mistake "negates the kind of culpability required for commission of the offense." Once again, this subsection is technically not necessary in view of the requirement that:

"No person may be convicted of an offense unless each element of the offense is provided beyond a reasonable doubt." Federal Rules of Criminal Procedure, Rule 25.1(a).

If an element of the offense such as culpability is negated, the prosecution fails. This would be the case under present law, for example, in the tax field. See e.g., *United States v. Murdock*, 290 U.S. 389 (1933). The subsection is included, however, for purposes of clarity.

Subsection (b) provides a somewhat broader defense of mistake of law but only as an affirmative defense. Here the defense is available, even though knowledge of the legal norm is not required as an element of the definition of the offense. An affirmative defense is one which "must be proved by the defendant by a preponderance of evidence." Rule 25.1(g). It is a defense, if established affirmatively, that the defendant in essence acted in conformity with an "official statement of the law afterward determined to be invalid or erroneous." Reliance upon the opinion of an attorney is not sufficient to give rise to a defense of mistake of law.

§ 1-3C7. *Duress*

This section excuses from criminal liability conduct which is engaged in because of certain compelling circumstances which would have caused a person of reasonable firmness in the defendant's situation to succumb. The defense is, however, an affirmative defense, and under subsection (b) it is not a defense to intentional or knowing homicide, and it is not a defense if the person recklessly or criminally negligently placed himself in a situation in which it was reasonably probable that he would be subjected to duress.

§ 1-3C8. *Consent*

Subsection (a) provides that there is a defense if a person's consent to the defendant's conduct negates an element of the offense. Again, this provision only states a truism.

Subsection (b) specifies situations such as lawful sports events, where consent to bodily injury is a defense.

Subsection (c) provides four situations in which consent is not a defense, notwithstanding the general language of subsection (a). These are situations where the law declares the consent to be ineffective or void as a matter of policy.

§ 1-4A1. *Authorized sentences*

This section provides a comprehensive list of the alternative dispositions which may be imposed by a sentencing judge upon the conviction of a defendant. Most of the options are the subject of one or more specific sections in the chapter, so this section is primarily a “check list” or introductory guide. The thrust of the sentencing chapter is to maximize the discretion of Federal judges upon conviction, consistent with the general purposes of the Code enunciated in section 1-102.

Forfeitures (§§ 1-4A4, 3-13A2) and civil damages to person or property by reason of a criminal violation of the Code (§ 3-13A2) are not included in the list in subsection (c). Option (c) (6) continues the split-sentence or shock probation sentence now authorized in present 18 U.S.C. § 3651 and (c) (8) authorizes the sentencing judge to require the offender to give notice of his conviction.

Subsection (a) provides that “every person” (defined in § 1-1A4(52) to include a legal person as well as a human being) who is convicted of an offense against the United States, not just persons convicted of specific offenses in the Code, shall be sentenced in accordance with Chapter 4. In addition, the imposition of a sentence must be accompanied by ‘an appropriate’ statement of facts and reasons. Simple cases need only have short findings and reasons appear in the record. More complex cases might require more detail.

§ 1-4A2. *Resentence*

This section follows *North Carolina v. Pearce*, 395 U.S. 711 (1969), which permits a sentencing court to impose a higher sentence on remand or reconviction. A requirement for a statement of reasons appears in § 1-4A1, *supra*.

§ 1-4A3. *Disqualification*

This section provides uniform treatment for cases in which a criminal conviction should carry the forfeiture of or disqualification from office or employment, or other disability under the code.

Use of the sanction of disqualification rests in the discretion of the court. Under subsection (a), the court “may” order the offender, if he is a Federal public servant, disqualified for a period not in excess of the authorized term. Whether the “authorized term” extends to the upper range would depend on a dangerous special offender finding. Under subsection (b), the court “may” order the offender, if he is an “executive officer or other agent of an organization or a member of a licensed profession”, disqualified for a similar term from exercising similar functions in the same or other organizations, from practicing his profession, or from practicing his profession except under specified conditions.

Subsection (c) authorizes the court to terminate any disqualification or disability “for good cause” at any time after sentence.

Subsection (d) limits judicial discretion by mandating that any disability or other disqualification “be suitable and reasonably related to the nature of the offense of which the person is convicted”. “Suitability” is a concept now employed by the Civil Service Commission.

Subsection (e) preserves the existing jurisdiction of some of the regulatory agencies to oversee, for example, bank employees. It is included out of caution, since this jurisdiction would probably continue without this subsection.

§ 1-4A4. *Criminal forfeiture*

This section brings together all the necessary provisions—jurisdiction, and procedure—under which an offender may be ordered to forfeit property “tangible or intangible, real or personal, including money” to the United States. This is distinct from civil forfeiture under § 3-13A2, which requires a separate civil proceeding. It reflects current law, 18 U.S.C. § 1963 *et seq.*

§ 1-4A5. *Joint sentence*

This section avoids the difficulties involved in deciding in cases involving multiple offenses, whether to impose consecutive or concurrent terms of imprisonment, by introducing into American criminal jurisprudence the continental code concept of the joint sentence for multiple offenses. [See Hearings, Part III-C.] The joint sentence “may” be no longer than the maximum term of imprisonment or fine authorized for any one of the offenses but shall not exceed 75 percent of the combined total for all the offenses.

§ 1-4B1. Sentence of imprisonment

In place of the 16 different maximum terms of imprisonment found in present Title 18, this section authorizes seven. Each offense is allocated to one or another of the classes.

With respect to the four upper grades of felonies, the sentencing judge may impose sentences in the upper ranges of the authorized maximum only in accordance with section 1-4B2 and Rule 32.2 of the Rules of Criminal Procedure. This follows current law, 18 U.S.C. § 3575.

Subsection (d) provides that the Bureau of Corrections (at present, the Bureau of Prisons; name changed by § 3-12C1(a)) shall determine the place of confinement at which a sentence of imprisonment shall be served.

§ 1-4B2. Upper-range imprisonment for dangerous special offenders

This section, which is derived from section 3575 of present Title 18, and reflect the recommendations of the Commission that there be established the system under which extra-long prison terms may be imposed.

Such long sentences mainly perform an incapacitative function and should therefore be imposed only on offenders who are exceptionally dangerous. The terms "dangerous" and "special offender" are defined in subsection (b).

On the rationale and need for such sentences, see McClellan, "The Organized Crime Control Act (S. 30) or Its Critics: which Threatens Civil Liberties?," 46 *Notre Dame Law* 57, 146-88 (1970)

§ 1-4B4. Duration of imprisonment

Subsections (a) and (b)(1) continue present 18 U.S.C. § 3568. Subsection (b)(2) grants a similar credit for prison time served by a defendant who is first arrested on one charge and later prosecuted for another where such time has not been credited against another sentence.

Subsection (b)(3) replaces present 18 U.S.C. §§ 4161, 4162, 4165, and 4166 with an approach to "good time" credits which is more consistent with the rehabilitative purposes of such reductions in prison sentences. [See generally responses to Subcommittee questionnaire on good time, in Hearings, Part III-D.] Where good-time credits are awarded semi-mechanically, they serve no valid penal objective. The offender's general good behavior in the institution can adequately be taken into account by the Parole Commission in determining release on parole. But correctional experts and officials affirm that sentence reductions for special performance can be a powerful and helpful incentive for a prisoner. The details of this "excellent performance" system of good-time credits is to be developed by the Bureau of Corrections by regulations.

Subsection (b)(4) is a change from the Brown Commission's recommendations and present law. Present law gives a parolee or probationer no credit for "clean time". Section 3403(3)(a) would give full credit to a parolee. This provision follows a middle course of 50% credit.

§ 1-4C1. Fines

Present Title 18 sets 14 different maximum fine levels for offenses, and the amounts authorized do not appear to be correlated to the nature or seriousness of the criminal conduct involved. This section sets a much smaller number.

The section also adopts the "daily fine" system which is part of the criminal codes of a number of foreign countries. [See *Hearings*, Part III-C.] The daily-fine system permits the court to sentence the offender to a given number of days of fine, depending upon the seriousness of the offense and characteristics of the offender and without regard to his ability to pay. The "per diem" amount, however, shall be set by taking "into account the financial resources of the person and the nature of the burden that its payment will impose."

Subsection (c) authorizes the court to revoke, modify, or adjust any sentence to pay a fine upon petition of the offender.

§ 1-4C2. Response to nonpayment of fines

The system for collection of criminal fines is set forth in Part III, Administration, at section 3-10A3. Primary responsibility, under that section, is vested in the Internal Revenue Service.

This section provides for the issuance of an order to show cause where collection efforts fail. (Subsection (a)).

Subsection (c) authorizes the court, upon a finding that the default in payment of the fine is excusable, to extend the time for payment, reduce the amount, or revoke the sentence to pay a fine in whole or in part.

Subsection (b) authorizes imprisonment of the offender who defaults in payment of a fine unless the offender shows that (1) "his default was not attributable to an international failure to obey the sentence", and that (2) the default is not attributable "to a failure on his part to make a good faith effort to obtain the necessary funds for payment".

§ 1-4D1. Probation and conditional discharge

This section provides that a convicted defendant may be released from custody under supervision (probation) or without supervision (conditional discharge). The probation may be under "close" or "limited" supervision.

Subsection (a) provides that the authorized term of probation or conditional discharge is up to five years for a felony or misdemeanor (as under present 18 U.S.C. § 3651), or up to one year for a violation.

Subsection (b) contains no bias or presumption either in favor of or against probation as a proper disposition. One of the criteria to be considered, in determining whether to place an offender on probation or sentence him to imprisonment, is the available resources of the Federal probation service.

Subsection (c) lists a number of factors that may be considered by the sentencing judge in deciding whether to grant probation. The list is neither all-inclusive nor is it meant to be inclusive as to disposition.

§ 1-4D2. Conditions of release

This section expands upon the short list of possible conditions of probation in present 18 U.S.C. § 3651 in order to promote a more considered and to make more probable an individualized approach to probation dispositions. The 16 named conditions are not all inclusive; in fact subsection (b)(16) requires the offender "to comply with any other condition or conditions deemed by the court to be reasonably related to the rehabilitation of the offender or public safety or security". At the same time, the list is not so general that all of the listed conditions can logically be imposed on all persons placed on probation. By contrast, the general conditions of release in subsection (a) do apply to all offenders released on probation or conditional discharge.

§ 1-4D3. Duration of probation or conditional discharge

This section provides that the period of probation starts to run on the date the order is entered, and that the court may at any time alter the conditions of release or discharge the offender completely from the supervision or the conditions.

§ 1-4D4. Response to noncompliance with condition of release

The duties of probation officers are set forth in section 3-12B1.

This section declares the powers of the court and the probation officer with respect to an offender who has failed to comply with a condition of release or as to whom there is probable cause to believe that he has so failed. [On revocation of probation, modification of probation, and arrest of probationer see Rules 42.1 (f), (g) and (i) of the Rules of Criminal Procedure.]

§ 1-4E1. Sentence of death

Subsection (a) authorizes imposition of capital punishment upon an offender who has been convicted of murder (§ 2-7B1) or treason (§ 2-5B1).

Subsection (b) sets forth 7 circumstances which mitigate against imposition of the sentence of death in the case of both murder and treason, 3 aggravating circumstances in the case of treason and 7 aggravating circumstances in the case of murder. These circumstances must be considered by the factfinder in a proceeding separate from trial on the question of guilt, in accordance with section 1-4E2.

§ 1-4E2. Separate proceeding to determine sentence of death

Subsection (a) directs a separate proceeding, before a jury (unless waived) to determine whether a person convicted of murder or treason shall be sentenced to death.

Subsection (b) sets forth that this proceeding shall not be limited by the usual rules of evidence and makes provision for arguments. Both of these rules would probably obtain without being explicitly stated.

Subsection (c) bars imposition of the death penalty unless the jury is specifically asked and unanimously concludes that the sentence should be death.

This procedure eliminates the arbitrary and capricious nature of the traditional capital case where the same jury in a single proceeding determined both liability and penalty. That procedure has been held to be "cruel and unusual" and therefore unconstitutional. *Furman v. Georgia*, 408 S. 238 (1972). This procedure, in contrast, should pass constitutional muster. See dissenting opinion of the chief justice, 408 U.S. at 396-401.

PART II—SPECIAL PART

§ 2-5A1. *Definition of terms*

This section defines words and phrases used in more than one section of the chapter on Offenses Involving the Nation.

§ 2-5A2. *Jurisdiction*

The Federal government has inherent (and unlimited) jurisdiction over the offenses defined in this chapter, as this section indicates.

§ 2-5B1. *Treason*

This section copies, with only changes in punctuation, the definition of treason contained in the United States Constitution, Article III, Section 3. As to who may be tried and convicted of treason, as distinct from other national security offenses, the section uses the concept of a "national of the United States". "National of the United States" is defined in section 2-5A1(10) to mean a United States citizen or a person "who owes allegiance to the United States".

§ 2-5B2. *Military activity against the United States*

This section includes a non-national of the United States but sets forth an affirmative defense that the person acted as a member of the armed forces of the enemy in accordance with the laws of war.

§ 2-5B3. *Armed insurrection*

This section penalizes heavily armed insurrection or the advocacy of armed insurrection "under circumstances in which there is substantial likelihood" such advocacy will produce an armed insurrection. The term is defined in subsection (d).

§ 2-5B4. *Sabotage*

This section combines peacetime and wartime sabotage crimes, and then makes the existence of a state of war a grading factor. There is no attempt made in this chapter to define "war".

§ 2-5B5. *Avoiding military service obligations*

This section penalizes severely violation of selective service obligations.

§ 2-5B6. *Obstructing military service*

This section penalizes various forms of obstruction of the armed forces of the United States.

§ 2-5B7. *Espionage*

This section consolidates the present espionage statutes (§§ 18 U.S.C. §§ 793-798) into one provision with grading variations.

§ 2-5B8. *Misuse of national defense information*

The key phrases in this section ("national defense information", "communications information") are defined in § 2-5A1(3), (10).

The section is an attempt to translate the language of present law into the format of the code. On the scope of present law, see *New York Times v. United States*, 4030 S. 713, 736 n. 7, and 737 n. 8 (1970) (White, J.), Difficult issues on the construction of present law in reference to "intent" and "publication" are acknowledged.

§ 2-5B9. *Wartime censorship of communications*

This section brings into the Federal Criminal Code the wartime censorship provisions of the Trading With the Enemy Act (50 U.S.C. App. §§ 3(c), (d)).

§ 2-5B10. *Aiding National Security Offenders or Deserters*

This section derives from present 18 U.S.C. §§ 792 and 1381. The law is extended to include murder of the President, Vice President, or other high public servant in addition to the basic national security crimes.

§ 2-5B11. *Aiding escape of prisoner of war or enemy alien*

This section derives from present 18 U.S.C. § 757.

§ 2-5B12. *Offenses relating to vital materials*

This section incorporates by reference into the Criminal Code provisions of the Atomic Energy Act relating to unlicensed trafficking in and use of nuclear materials, atomic weapons, utilization and production facilities, and destruction of restricted data, as well as the provision in Title 50 relating to unlicensed sale or transfers of helium under certain circumstances.

§ 2-5C1. *Conduct hostile to a nation with which the United States is not at war*

This section derives from present 18 U.S.C. §§ 960, 956, but drops the designation of a country with which the United States "is at peace" as a "friendly" nation, in favor of "a nation with which the United States is not at war".

Appropriately higher grading is provided at the suggestion of the Association of the Bar of New York City.

§ 2-5C2. *Foreign armed forces*

This section derives from present 18 U.S.C. § 959.

§ 2-5C3. *International transactions*

This section incorporates into the Federal Criminal Code a series of statutes which use criminal sanctions to enforce prohibitions or complex regulatory schemes designed to conserve American assets or to implement American foreign policy objectives.

The intent requirement distinguishes them from the statutes themselves which remain outside Title 18.

§ 2-5C4. *Departure of vessels and vehicles*

This section is based upon § 1205 of the Draft prepared by the Commission.

§ 2-5C5. *Foreign agents*

This section brings into the Code the felony defined in 50 U.S.C. § 851, and also makes it a felony both to fail to register as a foreign agent (under 22 U.S.C. §§ 611-21) and surreptitiously to engage in the activity as to which registration is required or to conceal being a foreign agent.

§ 2-5D1. *Unlawful entry into the United States*

This section makes it a felony to enter the United States illegally or intentionally to bring illegal aliens into the country.

§ 2-5D2. *Hindering discovery of illegal entrants*

This section penalizes one who is an accessory after the fact as to illegal aliens. Under subsection (a)(1) it is an offense to employ an illegal alien if done "with intent to hinder, delay, or prevent [his] discovery or apprehension".

§ 2-5D3. *Fraudulent acquisition or improper use of naturalization, evidence of citizenship, or United States passport*

This section consolidates present 18 U.S.C. §§ 1015(a), 1424, 1425(a), (b) and 1542 regarding citizenship documents and passports.

§ 2-6A1. *Definition of terms*

This section defines terms used in more than one section of Chapter 6, Offenses Involving Governmental Processes.

§ 2-6B1. *Physical obstruction of Government function*

This is a broad general statute making it a Class E felony intentionally to obstruct any government function by physical interference or obstacle. ["Government" is defined in § 1-1A4(33) and "official proceeding" is defined in § 1-1A4(50)]. If any additional offense (assault, aggravated assault, maiming, malicious mischief or aggravated malicious mischief, arson or kidnapping, criminally negligent homicide, manslaughter, reckless homicide, murder), the

defendant will be treated more severely by the application of compound grading. [See § 1-2A5(d).]

§ 2-6B2. *Preventing arrest, search, or discharge of other duties*

This section singles out and creates a specific offense of a particular kind of physical interference with government function, i.e., effecting an arrest, executing an order for a wire tap or other process by creating a substantial risk of bodily injury or employing means require the use of substantial force to overcome resistance. This section protects the government officer in the exercise of his duty, leaving questions as to the validity of such action to be resolved in the courts rather than in the streets. It would set aside the result of cases like *John Bad Elk v. United States*, 177 U.S. 529, 537 (1900).

§ 2-6B3. *Hindering law enforcement*

This section derives from present 18 U.S.C. §§ 3, 4, 1071, 1072.

§ 2-6B4. *Bail jumping*

This section derives from present 18 U.S.C. § 3150, but the penalty levels are raised for serious crimes to be the same as the penalty for the highest offense with which the person was charged at the time he was released "upon condition or undertaking that he appear before a court or judicial officer as required".

§ 2-6B5. *Escape*

This section derives from present 18 U.S.C. § 751 but broadens the offense. For the definition of 'official detention' see § 1-1A4(49). The same affirmative defense of unavoidable circumstances is provided for failure to return under this section (e.g. from work release) as is provided under 2-6B4, Bail Jumping.

§2-6B6. *Contraband*

This section derives from present 18 U.S.C. §§ 1791, 1792. The statutory authority for the rules incorporated into this section is found in section 3-12C1(d)(1) (authorizing Bureau of Corrections to promulgate rules for the governance of Federal correctional facilities).

§ 2-6B7. *Flight to avoid prosecution or giving testimony*

This section derives from present 18 U.S.C. §§ 1073, 1074.

§ 2-C61 *Obstruction of justice*

This section replaces a number of specific sections with a broad and general provision penalizing the obstruction of the administration of justice.

§ 2-6C2. *Impeding justice*

This section derives from §§ 1342, 1343, 1344, 1345 of the Draft prepared by the Commission.

§ 2-6C3. *Harassment of juror*

This section derives from present 18 U.S.C. §§ 1503, 1504.

§ 2-6C4. *Demonstrating to influence judicial proceedings*

This section derives from present 18 U.S.C. § 1507 but sets a limit of "200 feet" rather than use the term "near."

§ 2-6C5. *Eavesdropping on jury deliberations*

This section derives, in part, from present 18 U.S.C. § 1508.

§ 2-6C6. *Criminal contempt*

This section derives from present 18 U.S.C. § 401.

§ 2-6D1. *Perjury*

This section derives from present 18 U.S.C. §§ 1621, 1623.

§ 2-6D2. *False statements*

This section consolidates in one section on false statements a large number of false statements provisions in present Title 18: e.g. §§ 35, 152, 286, 287, 288, 289, 372, 505, 550, 911, 954, 965, 966, 1001, 1005, 1006, 1007, 1008, 1010, 1011, 1012, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1025, 1026, 1027, 1423, 1424, 1425, 1426, 1506, 1541, 1542, 1546, 1623, 1713, 1722, 1732, 1917, 1919, 1920, 1922, 2072, 2388, 2391.

§ 2-6D. *Tampering with public records*

This section derives from present 18 U.S.C. §§ 2071, 1506.

§ 2-6E1. *Bribery*

This section deals with the bribery of and bribe receiving by public servants. ("Public servant" is defined in section 1-1A(58)). Commercial bribery is covered in section 2-8F3, bribery of witnesses and informants is covered in section 2-6C1(a)(1), (3), and bribery of voters is covered by section 2-6H1(a)(3), (4), "Benefit" and "pecuniary benefit" are defined in section 1-1A4(8).

§ 2-6E2. *Graft*

This section derives from a consolidation of §§ 1362, 1363, 1364, 1365 in the Draft prepared by the Commission.

§ 2-6E3. *Threatening a public servant*

This section penalizes threats to engage in criminal conduct with intent to influence a public servant.

§ 2-6E4. *Retaliation*

This section derives from § 1367 of the Draft prepared by the Commission.

§ 2-6E5. *Misuse of personnel authority*

This section derives from and broadens § 1533 of the Draft prepared by the Commission.

§ 2-6F1. *Disclosure of confidential information*

This section derives from present 18 U.S.C. § 1905, but states the information to be protected in generic rather than specific terms. It rejects a similar provision of the Brown commission (§ 1371) as too broad.

§ 2-6F2. *Nondisclosure of retainer*

This section makes it an offense to fail to disclose a retainer, unless the public servant is aware of the person's employment or retainer.

§ 2-6F3. *Conflict of interest*

This section is a limited but general conflict-of-interest provision.

§ 2-6F4. *Impersonating an official*

This section derives from present 18 U.S.C. §§ 912, 913, 915.

§ 2-6G1. *Tax evasion*

This section derives from § 1401 of the Draft prepared by the Commission, but adds a Class B felony grade for an evasion of taxes which exceeds \$100,000 similar to the highest grade under § 2-8D3(a)(1) theft where the amount stolen exceeds \$100,000. It has also been substantially modified in light of testimony before the subcommittee.

§ 2-6G2. *Disregard of tax obligations*

This section derives from § 1402 of the Draft prepared by the Commission.

§ 2-6G3. *Trafficking in taxable object*

This section derives from §§ 1403, 1404, 1405 of the Draft prepared by the Commission.

§ 2-6G4. *Smuggling*

This section derives from present 18 U.S.C. § 545.

§ 2-6H1. *Election fraud*

This section derives from § 1431 of the Draft prepared by the Commission.

§ 2-6H2. *Wrongful political contribution*

This section derives from present 18 U.S.C. §§ 602, 603, 607.

§ 2-6H3. *Foreign political influence*

This section derives from present 18 U.S.C. § 613.

§ 2-7A1. *Definition of terms*

This section defines terms used in more than one section in Chapter 7, Offenses Against the Person.

§ 2-7B1. *Murder*

This section provides for only a single class of murder, intentional killing. Under §§ 1-4E1, 1-4E2, the death penalty may be imposed. Jurisdiction is limited to federal enclaves, piracy, and the killing of a high public servant, but if a murder (or included homicide offense) is committed in "as an integral part of, including immediate flight from, the commission of "another offense under the Federal Criminal Code as to which compound grading is available, the killing may be prosecuted in federal court as part of the compound offense." See section 1-1A5(d) [For analogies in present Title 18 see, e.g., §§ 2113, 241.]

§ 2-7B2. *Reckless homicide*

This section separates out the so-called felony-murder type of murder into a separate section, graded as a Class A felony. If the killing in the course of commission of a felony is, in fact, intentional, the defendant may of course be prosecuted for murder.

§ 2-7B3. *Manslaughter*

This section derives from § 1602 of the Draft prepared by the Commission.

§ 2-7B4. *Criminally negligent homicide*

This section creates a new Federal crime to cover the conduct proscribed in present 18 U.S.C. § 1112(a) under the phrase "without due caution and circumspection". The word criminal is used before negligence, in the culpability standard used here (for the definition of criminal negligence, see § 1.2A1 (a)(5)) which indicates clearly that the civil or tort law standard of negligence is not the applicable test.

§ 2-7B5. *Aiding suicide*

This section derives from § 210.5 of the Model Penal Code.

§ 2-7C1. *Maiming*

This section derives from present 18 U.S.C. § 114.

§ 2-7C2. *Aggravated assault*

"This section derives from present 18 U.S.C. §§ 111, 112, 113.

§ 2-7C3. *Assault*

This section derives from § 1611 of the Draft prepared by the Commission.

§ 2-4C. *Menacing*

The term "assault" is used in the Code and in present Title 18 to cover the common-law meaning of the word "battery." This section denominates a type of common-law assaults as an offense.

§ 2-7C5. *Terrorizing*

Both threats against the President (under (a)(1)) and threats that cause large-scale fear and evacuation of buildings and other places (under (a)(2)) are extremely serious, specialized assault crimes. The section derives from present 18 U.S.C. §§ 871, 876, 877, 35, 837(d). Subsection (a)(3) covers the conveying of false information that has the same effect as a threat.

§ 2-7D1. *Aggravated kidnapping*

This section derives from present 18 U.S.C. § 1201.

§ 2-7D2. *Kidnaping*

This section provides a lower level of the offense of kidnaping.

§ 2-7D3. *Unlawful imprisonment*

This section derives from present 18 U.S.C. § 1201.

§ 2-7D4. *Skyjacking*

This section makes air piracy a specialized kidnaping offense, graded at the highest level.

A skyjacking that involved an intentional homicide would be a murder order § 2-781, for which the death penalty would be authorized. Note that since compound grading is not involved, two separate offenses would have been committed.

§ 2-7D5. *Mutiny or commandeering*

This section derives from present 18 U.S.C. § 2193 and § 1805 of the Draft prepared by the Commission.

§ 2-7E1. *Rape*

This section consolidates homosexual rape by force with rape into a single offense. "Sexual act" and "spouse" are defined in section 2-7A1.

There seems to be no reason to distinguish rape of men from rape of women.

§ 2-7E2. *Statutory rape*

This section covers nonforceful sexual imposition by drugs, misrepresentation, abuse of status (e.g. custodian in institution), or taking advantage of a person below the age of consent, a mentally-ill person or one who is unconscious.

§ 2-7E3. *Sexual assault*

This section penalizes a variety of sexual assaults. For the definition of "sexual contact" see § 2-7A1.

§ 2-7F1. *Deprivation of civil rights*

This section derives from present 18 U.S.C. §§ 241, 242 with the addition of the culpability requirement (intentionally) enunciated in *Screws v. United States*, 325 U.S. 91 (1945). It and the following civil rights statutes follow present law.

§ 2-7F2. *Interference with Government benefits or programs*

This section derives from present 18 U.S.C. § 245.

§ 2-7F3. *Discrimination*

This section derives from present 18 U.S.C. § 245.

§ 2-7F4. *Interference with civil rights activities*

This section derives from present 18 U.S.C. § 245.

§ 2-7F5. *Unlawful acts under color of law*

This section makes a specific offense of the kind of misbehavior on the part of law enforcement or prison officials that has most often been dealt with under the general language of present 18 U.S.C. § 242.

It comes from a suggestion made in the hearings.

§ 2-7F6. *Interference with activities of employees and employers*

This section derives from present 18 U.S.C. § 1231.

§ 2-7G1. *Eavesdropping*

This section derives from present 18 U.S.C. § 2511.

§ 2-7G2. *Trafficking in eavesdropping device*

This section derives from present 18 U.S.C. § 2512.

§ 2-7G3. *Interception of correspondence*

This section derives from present 18 U.S.C. § 1702.

§ 2-8A1. *Definition of terms*

This section defines the words and phrases used in more than one section of Chapter 8, Offenses Against Property.

§ 2-8A2. *Valuation*

The grade for sentencing purposes of a number of the offenses defined in Chapter 8 turns on the value of the property destroyed, stolen, forged etc. This section provides a series of valuation rules applicable to all sections in the chapter.

§ 2-8B1. *Aggravated arson*

This section defines the highest and most severely punished grade of arson—where the arson is undertaken "in reckless disregard of the risk that at the time of such conduct a person may be in such structure."

§ 2-8B2. *Arson*

This section provides a lesser degree of the offense of arson.

§ 2-8B3. *Release of destructive forces*

This section derives from present 18 U.S.C. § 832.

§ 2-8B4. *Failure to control or report dangerous fire*

This section derives from present 18 U.S.C. § 1856.

§ 2-8B5. *Aggravated malicious mischief*

This section and § 2-8B6 consolidate a number of property destruction and tampering with property crimes in present law [e.g. 18 U.S.C. §§ 1361, 1362, 1363, 1364].

§ 2-8B6. *Malicious mischief*

This section provides a lower grade of the offense defined in § 2-8B5.

§ 2-8C1. *Armed burglary*

This section penalizes and grades at a higher level burglary in which the defendant or an accomplice is armed with a dangerous weapon. ['Dangerous weapon' is defined in § 1-1A4(19)].

§ 2-8C2. *Burglary*

This section introduces a general burglary offense statute in Title 18.

§ 2-8C3. *Possession of burglar's tools*

This section penalizes the possession of tools or other articles adapted for the commission of an offense involving forcible entry with intent to use the thing possessed in the commission of such an offense.

§ 2-8C4. *Aggravated criminal trespass*

This section penalizes the take-over and occupancy of the property of another, without authority, by force or threat of force.

§ 2-8C5. *Criminal trespass*

This section penalizes knowing unlawful entry on property of another on entering or remaining unlawfully on such property after an order to leave or not to enter personally communicated. "Property of another" is defined in § 8A1(9) and "property" is defined in § 2-8A1(8). Since property is defined to mean "anything of value" the offense of criminal trespass includes "entering and stowing away" in an airplane or ship or "entering and concealing" oneself in a motor vehicle.

§ 2-8D1. *Armed robbery*

This section penalizes and grades at a higher level robbery in which the defendant or an accomplice is armed with a dangerous weapon.

§ 2-8D2. *Robbery*

This single section consolidates in one provision a number of specific object robbery statutes in present Title 18: 18 U.S.C. §§ 2113 (robbery of banks), 2114 (robbery of mails and other Federal property) 1951 (robbery "affecting commerce"), 2111 (robbery in federal enclaves).

§ 2-8D3. *Theft*

This single section consolidates a large number of theft offense statutes in present Title 18. There is no need to maintain the distinctions the common law drew between larceny, larceny by trick, false pretenses, embezzlement, fraudulent conversion and the like. The offense is graded depending upon the nature of the property stolen or its value. The offenses and provisions consolidated in this section include present 18 U.S.C. §§ 152, 153, 201, 285, 286, 287, 288, 289, 332, 371, 436, 549, 550, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 659, 660, 661, 663, 664, 914, 1003, 1005, 1006, 1007, 1008, 1010, 1011, 1013, 1014, 1020, 1023, 1024, 1025, 1027, 1163, 1421, 1422, 1506, 1656, 1658, 1702, 1704, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1719, 1720, 1721, 1722, 1723, 1725, 1726, 1728, 1733, 1851, 1852, 1853, 1854, 1861, 1901, 1911, 1912, 1919, 1920, 1921, 1923, 1951, 2071, 2073, 2113, 2197, 2199, 2233, 2271, 2272, 2312, 2313, 2314, 2315, 2316, 2317, 3487, 3497.

§ 2-8D4. *Receiving stolen property*

The offense has not been consolidated in the general theft section because of the basic distinction between one who steals and one who trades in the property stolen by another.

§ 2-8D5. *Scheme to defraud*

This section combines the present mail and wire fraud sections (18 U.S.C. §§ 1341, 1342, 1343). It also reflects 18 U.S.C. § 371 (conspiracy to defraud). Because this section is actually a form of Attempted Theft and involves a combination, neither § 1-2A4 (criminal attempt) or § 1-2A5 (criminal conspiracy) apply under this provision.

The language is taken from present law to carry forward judicial construction.

§ 2-8D6. *Misapplication of entrusted property*

This is a specialized provision with a lower proof requirement than for theft.

§ 2-8D7. *Interference with security interest*

This section offers special protection to Federal government securities.

§ 2-8D8. *Joyriding*

This section penalizes the use of a motor vehicle under circumstances not amounting to theft.

§ 2-8E1. *Counterfeiting*

This section consolidates present 18 U.S.C. §§ 471, 472, 473, 478, 479, 480, 482, 483, 484, 485, 486, 489. 'Falsely makes' is defined in § 2-8A1(4) and includes falsely making, falsely altering or falsely completing.

§ 2-8E2. *Forgery*

This section is the same as § 2-8E1, except that counterfeiting concerns false making of a security or other obligation of the United States government or a foreign government whereas forgery covers false making of any writing (defined in § 8A1(12)) and includes non-governmental paper.

§ 2-8E3. *Counterfeiting paraphernalia*

This section consolidates present 18 U.S.C. §§ 474, 475, 476, 477, 481, 504,

§ 2-8E4. *Trafficking in specious securities*

This section derives from present 18 U.S.C. § 2314.

§ 2-8E5. *Making or passing slugs*

This section derives from present 18 U.S.C. § 491.

§ 2-8E6. *Issuance of written instrument without authority*

This section covers the situation that is not counterfeiting or forgery because the security is in fact genuine, but is issued without authority.

§ 2-8F1. *Bankruptcy fraud*

This section derives from § 1756 of the Draft prepared by the Commission.

§ 2-8F2. *Commercial bribery*

This section covers bribing and bribe-receiving in certain non-governmental contexts.

§ 2-8F3. *Environmental spoilation*

This section penalizes "gross" or "flagrant" pollution in violation of statute or regulation.

It is new to the bill.

§ 2-8F4. *Unfair commercial practices*

This section consolidates or incorporates a number of current provisions.

It is new to the bill.

§ 2-8F5. *Securities violations*

This section incorporates by reference a number of offenses involving securities.

§ 2-8F6. *Regulatory offenses*

There are a great many offenses in the United States Code which are designed to support or reinforce regulatory Acts of Congress through the imposition of criminal sanctions on those who fail to comply. This section is

designed to achieve consistency in penal policy among these scattered regulatory offenses.

Sanctions for violation shall be governed by this section in the Federal Criminal Code even though the offense is defined in the Title (e.g. agriculture, postal service) to which it is substantively addressed.

It should be noted that this section does not apply, unless the specific offense statute declares on its fact that it is a "regulatory offense." There is no general incorporation by reference.

§ 2-9A1. *Definition of terms*

This section defines the words and phrases used in more than one section in Chapter 9, Offenses Against Public Order.

§ 2-9B1. *Inciting riot*

This section derives from present 18 U.S.C. § 2101.

§ 2-9B2. *Arming rioters*

This section derives from § 1802 of the Draft prepared by the Commission.

§ 2-9B3. *Engaging in a riot*

This section makes it a crime to engage in a riot. "Riot" is defined in § 2-9A1(7).

§ 2-9B4. *Disobedience of public safety orders under riot conditions*

This section supports public safety officers engaged in riot control by making it a violation to disobey an order to move, disperse or refrain from specified activities. It reflects the tradition in Anglo-American law of "reading the riot act".

§ 2-9C1. *Racketeering activity*

This section derives from present 18 U.S.C. §§ 1961, 1962.

§ 2-9C2. *Loansharking*

This section derives from present 18 U.S.C. §§ 891, 892, 893, 894.

§ 2-9C3. *Extortion*

This section derives from present 18 U.S.C. §§ 872, 873, 874, 875, 876, 877, 1951(a) and (b)(2). The language is taken from 8, 1951 to carry forward its judicial construction.

§ 2-9C4. *Coercion*

This section derives from § 1617 of the Draft prepared by the Commission.

§ 2-9D1. *Para-Military activities*

This section derives from § 1104 of the Draft prepared by the Commission.

§ 2-9D2. *Procuring or supplying dangerous weapon for criminal activity*

This section derives from § 1181 of the Draft prepared by the Commission.

§ 2-9D3. *Illegal firearms, ammunition, or explosive materials business*

This section derives from § 1812 of the Draft prepared by the Commission.

§ 2-9D4. *Trafficking in and receiving limited-use firearms*

This section derives from § 1813 of the Draft prepared by the Commission.

§ 2-9D5. *Possession of explosives and destructive devices in buildings*

This section derives from § 1814 of the Draft prepared by the Commission.

§ 2-9D6. *Armed criminal conduct*

This section, new to the code, is based on 18 U.S.C. § 924(c). It applies across the full range of other Federal offenses, except those listed, which already are specialized weapon offenses.

§ 2-9E1. *Drug trafficking or possession*

This section derives from the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513).

It restates present law.

§ 2-9F1. *Illegal gambling business*

This section derives from present 18 U.S.C. § 1955.

§ 2-9F2. *Protecting State antigambling policies*

This section derives from § 1832 of the Draft prepared by the Commission. It also reflects 18 U.S.C. § 1084(d).

§ 2-9F3. *Illegal prostitution business*

This section adopts, with appropriate differences, present 18 U.S.C. § 1955 to the business of prostitution.

§ 2-9F4. *Protecting state antiprostitution policies*

This section adopts to the protection of state policy as to prostitution § 1832 of the Draft prepared by the Commission.

§ 2-9F5. *Disseminating obscene material*

This section derives from § 1851 of the Draft prepared by the Commission. The provision, however, is broader and more precise in defining obscenity and the kind of conduct that may be found to fall within its scope.

It is to be noted, however, that it may not be as broad as present law. 18 U.S.C. § 1461 applies to "indirect" and "profane" radio broadcasting.

§ 2-9G1. *Misuse of American yag*

This section derives from present 18 U.S.C. § 700.

PART III—ADMINISTRATION

§ 3-10A1. *Obligations of the Attorney General*

This section authorizes and directs the Attorney General of the United States, as the nation's chief law enforcement officer, to "prepare, cause to be published, and periodically revise administrative regulations" on criminal investigative jurisdiction and prosecutive discretion.

State and local representatives must be consulted in developing the standards. This provision is designed to respond to the fears expressed in the hearing that abuses of prosecutive discretion might develop.

In a limited class of cases, it may be against the national interest if state or local as well as Federal officers are involved in a criminal case. If the victim of the offense is a high public servant, for example, the President, and if the crime is one named in this section, the Attorney General is authorized to assert exclusive Federal investigative or prosecutive jurisdiction which suspends state or local action until the Federal action has been terminated. Provision is made, however, for the Attorney General to seek from state and local authorities such help as he may need in a particular case. In an appropriate investigation, the aid of the military could also be sought, i.e., the killing of the President. Finally, the section excludes the independent agencies or commissions, i.e., S.E.C., F.T.C., etc., from its scope and make explicit what would be true anyway; Prosecutive discretion on investigative jurisdiction should not be matter of litigation. See e.g., *United States v. Hutcheson*, 345 F.2d 961 (C.D. 1965)

§ 3-10A2. *Rewards and appropriations for rewards*

This section derives from present 18 U.S.C. § 3059. The principal change is an increase in the amount of money authorized to be expended by the Attorney General in the form of rewards for the capture or for information leading to the arrest of offenders.

§ 3-10A3. *Conviction records*

This section derives from present 18 U.S.C. § 3578.

§ 3-10A4. *Collection of fines*

This section places primary responsibility for the collection of criminal fines on the Internal Revenue Service (Secretary of the Treasury or his delegate). The section also applies to the collection of fines tools used successfully in Federal tax collection. Under present law, "one of the principal differences in the collection of fines and taxes is that fines are collected like private civil judgments". [*Hearings*, part II-B, p. 1722.] This section upgrades the collection of fines by adapting and incorporating collection provisions of Federal tax law. [See generally *Hearings*. Part III-B, pp. 1709-1732.]

§ 3-10A5. *Interned belligerent nationals*

This section derives from present 18 U.S.C. § 3058.

§ 3-10A6. *Protected facilities*

This section derives from Title V of the Organized Crime Control Act of 1970, Public Law 91-452, 84 Stat. 933-34.

§ 3-10B1. *Federal Bureau of Investigation*

This section derives from present 18 U.S.C. § 3052.

§ 3-10B2. *United States Marshals*

This section derives from present 18 U.S.C. §§ 3053, 4086, 4006.

§ 3-10B3. *Secret Service*

This section derives from present 18 U.S.C. § 3056.

§ 3-10B4. *Postal Service*

This section derives from present 18 U.S.C. § 3061.

§ 3-10B5. *Federal Probation Service*

This section derives from present 18 U.S.C. § 3653.

§ 3-10B6. *Bureau of Corrections*

This section derives from present 18 U.S.C. §§ 3050, 4004.

§ 3-10C1. *Definition of terms*

This section derives from present 18 U.S.C. § 2510.

§ 3-10C2. *Authorization for interception of private communication*

This section derives from present 18 U.S.C. §§ 2516, 2617.

§ 3-10C3. *Procedure for interception of private communication*

This section derives from present 18 U.S.C. §§ 2517, 2518.

§ 3-10C4. *Report concerning intercepted communication*

This section derives from present 18 U.S.C. § 2519.

§ 3-10C5. *Intercepted private communications*

This section derives from 18 U.S.C. §§ 2515, 2518(8), (9), (10), 3504.

§ 3-10D1. *Definition of terms*

This section derives from present 18 U.S.C. § 6001.

§ 3-10D2. *Immunity generally*

This section derives from present 18 U.S.C. §§ 6002, 2514.

Language changes codify the Supreme Court's opinion in *Kasyisan v. United States*, 1406 U.S. 441 (1972); see *Wong Sun v. United States*, 371 U.S. 471, 488 (1963).

§ 3-10D3. *Court or grand jury proceeding*

This section derives from present 18 U.S.C. § 6003.

§ 3-10D4. *Administrative proceeding*

This section derives from present 18 U.S.C. § 6004.

§ 3-10D5. *Congressional proceeding*

This section derives from present 18 U.S.C. § 6005.

§ 3-10E1. *Definition of terms*

This section derives from Title 18.—Appendix, Interstate Agreement on Detainers, §§ 3, 4.

§ 3-10E2. *General provisions*

This section derives from Title 18.—Appendix, Interstate Agreement on Detainers, §§ 5, 6, 7.

§ 3-10E3. *Interstate agreement on detainers*

This section derives from Title 18.—Appendix, Interstate Agreement on Detainers, § 2.

§ 3-10E4. *Fugitive from State to State*

This section derives from present 18 U.S.C. § 3182, 3194.

§ 3-10F1. *General provisions*

Subsection (a) of this section derives from present 18 U.S.C. § 3181.

Subsection (b) of this section derives from present 18 U.S.C. § 3186.

Subsection (c) of this section derives from present 18 U.S.C. § 3195.

§ 3-10F2. *Extradition of fugitive*

Subsection (a) of this section derives from present 18 U.S.C. § 3184.

Subsection (b) of this section derives from present 18 U.S.C. § 3183.

Subsection (c) of this section derives from present 18 U.S.C. § 3185.

§ 3-10F3. *Procedure for extradition*

Subsection (a) of this section derives from present 18 U.S.C. § 3187.

Subsection (b) of this section derives from present 18 U.S.C. § 3188.

Subsection (c) of this section derives from present 18 U.S.C. §§ 3189, 3190, 3191.

Subsection (d) of this section derive from present 18 U.S.C. § 3192.

Subsection (e) of this section derives from present 18 U.S.C. § 3193.

§ 3-11A1. *Rules*

Subsection (a) of this section derives from present 18 U.S.C. §§ 3771, 3402.

Subsection (b) of this section derives from present 18 U.S.C. § 3772.

§ 3-11A2. *Appointment of counsel*

This section derives from present 18 U.S.C. §§ 3006A(i), (j), (1).

§ 3-11A3. *Foreign documents*

Subsection (a) of this section derives from present 18 U.S.C. § 3495(c).

Subsection (b) of this section derives from present 18 U.S.C. § 3496.

§ 3-11A4. *Admissibility of confessions*

This section derives from present 18 U.S.C. § 3501.

§ 3-11A5. *Admissibility of eyewitness testimony*

This section derives from present 18 U.S.C. § 3502.

§ 3-11A6. *Execution of sentence of death*

This section derives from present 18 U.S.C. § 3566.

§ 3-11B1. *Power of courts and magistrates*

This section derives from present 18 U.S.C. § 3041.

§ 3-11B2. *Jurisdiction outside the United States*

This section derives from present 18 U.S.C. § 3042.

§ 3-11B3. *District courts*

This section derives from present 18 U.S.C. §§ 3231, 3241.

§ 3-11B4. *United States Magistrates*

This section derives from present 18 U.S.C. § 3401(a).

§ 3-11B5. *Offenses involving two districts*

This section derives from present 18 U.S.C. § 3237.

§ 3-11B6. *Offenses not committed in any district*

This section derives from present 18 U.S.C. § 3258.

§ 3-11B7. *New district or division*

This section derives from present 18 U.S.C. § 3240.

§ 3-11B8. *Place of commission of specific offenses*

Subsection (a) of this section derives from present 18 U.S.C. § 3236.

Subsection (b) of this section derives from present 18 U.S.C. § 3239. Subchapter C. Mental Incapacity [§§ 3-11C1, -11C2, -11C3, -11C4, -11C5, -11C6, -11C7, -11C8].

This subchapter derives from a revision of present chapter 313 of Title 18 prepared by an Intradepartmental Committee of the Department of Justice and by the Committee on the Administration of the Criminal Law of the Judi-

cial Conference of the United States. It has been modified to conform with the scope of the mental illness or defect defense in section 1-3C2.

§ 3-11D1. Sentencing recommendation of the attorney for the Government

This section is new. It recognized that the necessary role of the executive extends beyond obtaining evidence and presenting it in court. Justice must also take into consideration the disposition of the offender and the consequences in the community. Only the prosecutor can speak for the community at the time of sentence.

§ 3-11D2. Psychiatric examination

This section permits the defendant, upon conviction, to raise the issue of mental illness prior to sentencing. The court may refer the offender to a panel of qualified psychiatrists for an examination and report. The report is not binding on the sentencing judge but may be considered by him.

§ 3-11D3. Effect of Presidential remission

This section derives from present 18 U.S.C. § 3570.

§ 3-11E1. Appeal by United States

This section derives from present 18 U.S.C. § 3731.

Subsection (c) of this section derives from present 18 U.S.C. § 2518(10) (b).

§ 3-11E2. Appeal from conditions of release

This section derives from present 18 U.S.C. § 3149.

§ 3-11E3. Review of sentence

This section derives from present 18 U.S.C. § 3576.

§ 3-12A1. Definition of terms

This section defines terms used in more than one section in Chapter 12. It has no analogue in present Title 18.

§ 3-12B1. Duties of probation officers

This section derives from present 18 U.S.C. § 3655.

§ 3-12B2. Duties of administrative office of United States courts

This section derives from present 18 U.S.C. § 3656.

§ 3-12B3. Transportation of probationers

This section derives from present 18 U.S.C. § 4283.

§ 3-12C1. Organization, director, and responsibilities

Subsections (a) and (b) of this section derive from present 18 U.S.C. § 4041. The post of Director of the Bureau of Prisons is made subject to appointment by and with the advice and consent of the Senate, because of the importance of the position in the Federal criminal justice system.

Subsection (c) derives from present 18 U.S.C. § 4001.

Subsection (d) derives from present 18 U.S.C. §§ 4042, 4125.

§ 3-12C2. Character of correctional facilities

Subsection (a) of this section derives from present 18 U.S.C. § 4081.

Subsection (b) of this section derives from present 18 U.S.C. § 5011.

Subsection (c) of this section derives from present 18 U.S.C. § 4253.

Subsection (d) of this section derives from present 18 U.S.C. § 4005.

§ 3-12C3. Contracting

Subsection (a) of this section derives from present 18 U.S.C. § 4002.

Subsection (b) of this section derives from present 18 U.S.C. § 5003.

Subsection (c) of this section derives from present 18 U.S.C. §§ 5013, 4255.

§ 3-12C4. Federal institutions in States without appropriate facilities

This section derives from present 18 U.S.C. § 4003.

§ 3-12C5. Appropriations and acquisitions

Subsection (a) of this section derives from present 18 U.S.C. § 4009.

Subsection (b) of this section derives from present 18 U.S.C. § 4010.

Subsection (c) of this section derives from present 18 U.S.C. § 4011.

§ 3-12D1. *Official detention*

Subsections (a), (c), and (e) of this section derive from present 18 U.S.C. § 4082.

Subsection (b) of this section derives from present 18 U.S.C. § 4084.

Subsection (d) of this section derives from present 18 U.S.C. § 4007.

§ 3-12D2. *Transfer to State facility*

This section derives from present 18 U.S.C. § 4085.

§ 3-12D3. *Transportation of offenders*

This section derives from present 18 U.S.C. § 4008.

§ 3-12D4. *Discharge*

Subsection (a) of this section derives from 18 U.S.C. § 4282.

Subsection (b) of this section derives from present 18 U.S.C. § 4163.

Subsection (c) of this section derives from present 18 U.S.C. §§ 4281, 4284.

§ 3-12E1. *Organization*

"Subsections (a) and (b) of this section derive from present 18 U.S.C. § 4121.

Subsection (c) of this section derives from present 18 U.S.C. § 4127.

Subsection (d) of this section derives from present 18 U.S.C. § 4128.

§ 3-12E2. *Administration*

This section derives from present 18 U.S.C. §§ 4122, 5123.

§ 3-12E3. *Purchase of goods and services of correctional industries*

This section derives from present 18 U.S.C. § 4124.

§ 3-12E4. *Correctional industries fund*

This section derives from present 18 U.S.C. § 4126.

§ 3-12F1. *Parole commission*

This section derives, in large part, from legislation introduced by Senator Burdick in the Senate in the 92d Congress (S. 3993) to create a system of regional parole boards and which received favorable testimony in Hearings before the Subcommittee on National Penitentiaries.

§ 3-12F2. *Duties of probation officers as to parole*

This section derives from present 18 U.S.C. § 3655.

§ 3-12F3. *Parole*

This section derives from present 18 U.S.C. §§ 4202, 4203, 4254, 4164, 4208(c).

§ 3-12F4. *Conditions of parole*

This section derives from present 18 U.S.C. §§ 4204, 4203.

§ 3-12F5. *Duration of parole*

This section derives from present 18 U.S.C. § 4208(d).

It also reflects, in part, § 3403(3) of the Brown commission's recommendations. See *supra* § 1-4B4 (Duration of Imprisonment)

§ 3-12F6. *Response to noncompliance with condition of parole*

This section derives from present 18 U.S.C. §§ 4205, 4206, 4207, 4210.

§ 3-12F7. *Finality of parole determinations*

This section derives, in part, from § 3406 of the Draft prepared by the Commission. Since an appellate process is provided within the Parole Commission and its rules are subject to periodic review by the congress, the decisions of the commission are not made subject of other reexamination.

§ 3-13A1. *Injunctions*

This section derives from present 18 U.S.C. § 1964. Its policy is extended to other similar sections of the Code.

§ 3-13A2. *Damages*

This section derives from present 18 U.S.C. §§ 1964, 2520. Appropriate charges have been made to integrate it with § 3-13A1.

§ 3-13A3. *Civil forfeiture*

This section consolidates a number of individual sections found in present Title 18. See, e.g., 18 U.S.C. 2513.

§ 3-13A4. *Procedure*

This section derives from present 18 U.S.C. §§ 1965, 1966, 1967.

§ 3-13A5. *Civil investigation demand*

This section derives from present 18 U.S.C. § 1968.

§ 3-13B1. *Definition of terms*

This section derives from present 18 U.S.C. § 5031.

§ 3-13B2. *Surrender to State authorities*

This section derives from present 18 U.S.C. § 5001.

§ 3-13B3. *Alleged juvenile delinquent*

This section derives from present 18 U.S.C. § 5035.

§ 3-13B4. *Juvenile delinquency proceedings*

This section derives from present 18 U.S.C. §§ 5032, 5033, 5034, 5036.

It also codifies, the result of *Kent v. United States*, 383 U.S. 541, 552-54 (1966).

§ 3-13B5. *Parole of juvenile delinquent*

This section derives from present 18 U.S.C. § 5037.

Subchapter C. Criminal Law Reform Commission [§§ 3-13C1, 3-13C2, 3-13C3, 3-13C4, 3-13C5, 3-13C6]

This Subchapter is new to Title 18 and is introduced to fill the need for a continuing and independent entity to study the operation of the new Federal Criminal Code and to make recommendations for changes, as well as to conduct continuing and comprehensive studies of aspects of the criminal justice system.

It reflects recommendations made in the hearings.

Section-by-section Analysis of Title II Amendments to Federal Rules of Criminal Procedure

Rule 3.1. Commencement of prosecution

This rule derives from § 701(6) of the Draft prepared by the Commission. A basic change is to stop the running of the statute of limitations at the time a complaint, as well as an indictment or information, is filed.

Rule 4 (c), (d), Warrant or summons upon complaint

Subdivision (c) of Rule 4 derives from present 18 U.S.C. § 3047.

Subdivision (d) of Rule 4 derives from present 18 U.S.C. § 3045.

Rule 5.1. Preliminary examination: time

This rule derives from present 18 U.S.C. § 3060.

Rule 6.1. Special grand jury

Subdivisions (a) and (b) of Rule 6.1 derive from present 18 U.S.C. § 3331.

Subdivisions (c) of Rule 6.1 derives from present 18 U.S.C. § 3332.

Subdivisions (d), (e), (f), (g), (h) and (j) derive from present 18 U.S.C. § 3333.

Subdivision (i) of Rule 6.1 derives from present 18 U.S.C. § 3334.

Rule 15. Depositions

This rule derives from present Rule 15, present 18 U.S.C. § 3503. The text is that drafted by the Rules Committee on the Federal Rules of Criminal Procedure.

Rule 16.1. Demands for Production of Statement and Reports of Witnesses

This rule derives from present 18 U.S.C. § 3500.

Rule 16.2. Capital offense

This rule derives from present 18 U.S.C. § 3432.

Rule 23.1. Trial by magistrate

This rule derives from present 18 U.S.C. § 3401.

Rule 25.1. Principles of proof

This rule derives from § 103 of the Draft, Federal Criminal Code prepared by the Commission.

Rule 26.2. Foreign documents

Subdivision (a) of Rule 26.2 derives from present 18 U.S.C. § 3491.
 Subdivision (b) of Rule 26.2 derives from present 18 U.S.C. § 3492.
 Subdivision (c) of Rule 26.2 derives from present 18 U.S.C. § 3493.
 Subdivision (d) of Rule 26.2 derives from present 18 U.S.C. § 3494.
 Subdivision (e) of Rule 26.2 derives from present 18 U.S.C. § 3495.

Rule 28.1. Accused as witness

This rule derives from present 18 U.S.C. § 3481.

Rule 32. Presentencing procedures

This rule derives from present 18 U.S.C. §§ 3577, 4208(b), and 4252.

Rule 32.1(g), (h), (i). Sentence and judgment

Subdivision (g) of Rule 32.1 derives from present 18 U.S.C. § 3651.
 Subdivision (h) of Rule 32.1 derives from § 3102(3) of the Draft, Federal Criminal Code prepared by the Commission.
 Subdivision (i) of Rule 32.1 derives from present 18 U.S.C. § 3653.

Rule 32.2. Sentencing dangerous special offenders

This rule derives from present 18 U.S.C. § 3575.

Rule 32.3. Probation officers

This rule derives from present 18 U.S.C. § 3654.

Rule 40(c). Commitment to another district: removal

Subdivision (c) of Rule 40 derives from present 18 U.S.C. § 3049.

Rule 41(i), (j), (k). Search and Seizure

Subdivision (i) of Rule 41 derives from present 18 U.S.C. § 3103a.
 Subdivision (j) of Rule 41 derives from present 18 U.S.C. § 3105.
 Subdivision (k) of Rule 41 derives from present 18 U.S.C. § 3109.

Rule 42.1. Jury trial for contempt in labor cases

This rule derives from present 18 U.S.C. § 3692.

Rule 42.2. Security of the peace and good behavior

This rule derives from present 18 U.S.C. § 3043.

Rule 44.1. Counsel

This rule derives from present 18 U.S.C. § 3006A.

Rule 46.1 Release pending trial

This rule derives from present 18 U.S.C. § 3146.

Subdivision (a) of Rule 46.1 derives also from present 18 U.S.C. § 3141.

Subdivision (i) of Rule 46.1 derives from present 18 U.S.C. § 3152(1).

Rule 46.2. Release in other cases

Subdivision (a) of Rule 46.2 derives from present 18 U.S.C. § 3149.

Subdivision (b) and (d) of Rule 46.2 derive from present 18 U.S.C. § 3148.

Subdivision (c) of Rule 46.2 derives from present 18 U.S.C. § 3144.

Rule 46.3. Enforcement

Subdivision (a) of Rule 46.3 derives from present 18 U.S.C. § 3150.

Subdivision (b) of Rule 46.3 derives from present 18 U.S.C. § 3142.

Subdivision (c) of Rule 46.3 derives from present 18 U.S.C. § 3143.

Rule 46.4. Orders respecting persons in custody

This rule derives from present 18 U.S.C. § 3012.

TITLE III—CONFORMING AMENDMENTS

In general, the Sections in Title III adhere to the guidelines and recommendations set down in Volume III of the Working Papers of the Commission, with such changes in terminology as are required to conform Titles I and II of the bill. No analysis of individual sections is presented here.

The amendments are made in order title by title and section by section. Each part contains the amendments for that title, i.e., Part A contains the amendments to Title 2. Conforming amendments are up to date through the 92nd Congress to provisions outside title 18. Certain recent (since Oct. 15, 1970) amendments to title 18 have not yet been integrated into the proposed title 18. See, e.g., P.L. 91-644 (18 U.S.C. § 1752); P.L. 92-539 (18 U.S.C. § 970).

The following types of conforming amendments have been made: (1) a uniform criminal intent terminology is introduced into criminal provisions outside title 18. Usually 'knowingly' (see § 1-2A1(3)) is submitted for 'willfully' or whatever other intent term is used, where present law has no intent requirement, none has been introduced. See, e.g., *United States v. Dotterweich*, 320 U.S. 217 (1943) (misbranded or adulterated drugs). (2) The penalty structure of provisions outside title 18 is classified within the system of the proposed code. In addition, lower level crimes are transferred outside title 18 into their appropriate titles, and higher level crimes outside title 18 are brought within the proposed code. Generally, all offenses outside title 18 have been lowered to authorized terms not to exceed 1 year. This is the misdemeanor level of present law (18 U.S.C. § 1). It becomes the class E felony level of the proposed code (§ 1-4B1(c)(1)), since this misdemeanor level has been reduced to six months (§ 1-4B1(c)(2)). (3) Where provisions outside title 18 are essentially duplicative of proposed new provisions, they are repealed. (4) It should be noted that the conforming amendment do contain a limited number of reforming amendments based on testimony received in the hearings or staff studies, see, e.g., vol. III, Subpart B, p. 1559; 18 U.S.C. § 712, amended by, Part B (Title 4 amendments) section 302(a). (5) No change has been made in the fine level of offenses defined outside of title 18.

TITLE VI—GENERAL PROVISIONS

Section 401. Sections of the bill and of Title I (Federal Criminal Code) are severable, if any provision is declared unconstitutional.

Section 402. The members of the Parole Commission are given salary schedules commensurate with the reorganization of the commission mandated by the code.

Section 403. The Federal Criminal Code, the amendments to the Federal Rules of Criminal Procedure, and the conforming amendments will not become effective until the January following the adjournment of the Congress following the Congress which passes the legislation.

EXHIBIT NO. 2

[Cautionary note: These tables should be used as only a rough guide, since they compare materials that are not always comparable]

TABLE I—COMPARISON TABLES

Introductory note: This table traces the provisions of present title 18, United States Code, to the Federal Criminal Code proposed by the National Commission on Reform of Federal Criminal Laws and to S. 1, the "Criminal Justice Codification, Revision and Reform Act of 1973."

Part I—Crimes

Present title 18	Commission draft	S. 1
Ch. 1.—General provisions:		
1.....	109(j),(s),(z),(ab).....	1-1A5.
2.....	401.....	1-2A6.
3.....	1303-04.....	2-6B3.
4.....	1303.....	2-6B3.
5.....	109(am).....	1-1A4(68).
6.....	109(n).....	1-1A4(34).
7.....	210.....	1-1A4(64).
8.....	1754(j).....	2-8E1(c).
9.....	210.....	Omitted.
10.....	219(a), (b).....	1-1A4(31), (42).
11.....	109(m), 1112(4)(c), 1201(2)(a).....	2-5A1(8).
12.....	Title 39.....	Title 39.
13.....	209.....	1-1A8.
14.....	211.....	1-1A6(c).
15.....	1754(b), (k).....	Omitted.
Ch. 2.—Aircraft and motor vehicles:		
31.....	Omitted.....	Omitted.
32.....	1111-13, 1701-09.....	2-8B1, 2-8B2, 2-8B5, 2-8B6, 1-2A4.
33.....	1611-13, 1701-09.....	2-8B1, 2-8B2, 2-8B5, 2-8B6, 1-2A4.
34.....	1601-09.....	1-4E1.
35.....	1354, 1614.....	2-7C3, 2-6D2.
Ch. 3.—Animals, birds, fish, and plants:		
41.....	1705, title 16.....	2-8B6, title 16.
42.....	1411, title 16.....	2-6G4, title 16.
43.....	1411, title 16.....	2-6G4, title 16.
44.....	Title 16.....	Title 16.
45.....	1705, title 16.....	2-8B6.
46-47.....	Title 16.....	Title 16.
Ch. 5.—Arson:		
81.....	1701.....	2-8B1, 2-8B2.
Ch. 7.—Assault:		
111.....	1301-02, 1367, 1611-14, 1616-18, 1631-33.....	2-7C2, 2-7C3, 2-7C4, 2-6B1, 2-6B2, 2-6B3.
112.....	1611-14, 1616-18, 1631-33.....	2-7C2, 2-7C3.
113.....	1001, 1611-14, 1616-18.....	2-7C2, 2-7C3, 1-2A4.
114.....	1612.....	2-7C1.
Ch. 9.—Bankruptcy:		
151.....	1756(3).....	2-8F1(d).
152.....	1321, 1351-52, 1356, 1361, 1732, 1756.....	2-8F1, 2-6D1, 2-6D2, 2-6D3, 2-6E1, 2-8D3.
153.....	1732-1737.....	2-8D3, 2-3D6.
154-55.....	Title 11.....	Title 11.
Ch. 11.—Bribery, Graft, and Conflicts of Interest:		
201.....	1321, 1361-63, 1732, 1741(k), 3501.....	1-1A4(58), 2-6E1, 2-6E2, 2-8D3, 1-4A3.
202.....	Title 5.....	Title 5.
203.....	1362, 1365, Title 5.....	2-6E1, 2-6E2, Title 5.
204.....	Title.....	Title 5.
205.....	1363, 1365, Title 5.....	2-6E2, Title 5.
206.....	Title 5.....	Title 5.
207-09.....	1327, Title 5.....	2-6F3, Title 5.
210.....	1361, 1364.....	2-6E1, 2-6E2.
211.....	1361, 1364-65, Title 5.....	2-6E1, 2-6E2, Title 5.
212-16.....	1857, Title 12.....	2-8F2, Title 12.
217.....	1361-63.....	2-6E1, 2-6E2.
218.....	3301(2), Title 5.....	1-4C1(1), Title 5.
219.....	1206, Title 5.....	2-5C5, Title 5.
224.....	1757.....	2-8F2.
Ch. 12.—Civil Disorders:		
231.....	1801-04.....	2-9B1, 2-9B3, 2-9B4.
232.....	1801-04.....	2-9A1.
233.....	206.....	1-1A6(g).
Ch. 13.—Civil Rights:		
241.....	1501.....	2-7F1.
242.....	1502-1521.....	2-7F1, 2-7F5.
243.....	Title 28.....	2-7F2, Title 28.
244.....	Title 10.....	Title 10.
245.....	1511-16.....	2-7F2, 2-7F3, 2-7F4.

TABLE I—COMPARISON TABLES—Continued

Part I—Crimes—Continued

Present title 18	Commission draft	S. 1
Ch. 15.—Claims and Services in Matters Affecting Government:		
281.....	Title 5.....	Title 5.
283.....	do.....	Do.
285.....	1356, 1732, 1735(2)(e), 1753.....	2-6D3, 2-8D3.
286.....	1352, 1732.....	2-6D2, 2-8D3, 1-2A5.
287-89.....	1352, 1732.....	2-6D2, 2-8D3.
290.....	Title 38.....	Title 38.
291.....	Title 28.....	Title 28.
292.....	1363, Title 5.....	2-6E2.
Ch. 17.—Coins and Currency:		
331.....	1751.....	2-8E1.
332.....	1732, 1751.....	2-8D3, 2-8E1.
333.....	Title 12.....	Title 12.
334.....	1753.....	2-8E6.
335.....	1753.....	2-8E2.
336-37.....	Title 31.....	Title 31.
Ch. 18.—Congressional Assassination, Kidnapping and Assault:		
351.....	[Omitted as separate section].....	2-7B1, 2-7D1, 2-7C2, 1-2A5, 3-10A1(b).
Ch. 19.—Conspiracy:		
371.....	1004, 1732-34, 1751.....	1-2A5, 2-8D3, 2-8D5
372.....	1301, 1303, 1352, 1366-67, 1401, 1511 (c).....	1-2A5, 2-6B1, 2-6B3, 2-6E3, 2-6E4, 2-6D2, 2-7F1.
Ch. 21.—Contempts:		
401.....	1341-45, 1349.....	2-6C6.
402.....	1341-45, 1349.....	2-6C1, 2-6C2.
Ch. 23.—Contracts:		
431-33.....	1372; Title 5.....	2-6F3; Title 5.
435.....	Title 15.....	Title 15.
436.....	1733, Title 18, Pt. E.....	2-8D3.
437.....	1372; Title 25.....	2-6F3; Title 25.
438-39.....	1363; Title 25.....	2-6E2; Title 25.
440.....	Title 39.....	Title 39.
441.....	Title 41.....	Title 41.
442.....	Title 44.....	Title 44.
443.....	1356; Title 41.....	2-6D3; Title 41.
Ch. 25.—Counterfeiting and Forgery:		
471-73.....	1751.....	2-8E1.
474.....	1751-52.....	2-8E3, 2-8E1.
475.....	Title 31.....	Title 31.
476-77.....	1752.....	2-8E3.
478.....	1751.....	2-8E1.
479-80.....	1751.....	2-8E1, 2-8E2.
481.....	1751-52.....	2-8E1, 2-8E2, 2-8E3.
482-83.....	1751.....	2-8E1, 2-8E2.
484.....	1751.....	2-8E2.
485-86.....	1751.....	2-8E1.
487-88.....	1752.....	2-8E3.
489.....	1411; Title 31.....	2-6G4, Title 31.
490.....	1751.....	2-8E1.
491.....	1755.....	2-8E5.
492.....	Title 31.....	1-4A4; Title 31.
493-97.....	1751.....	2-8E2.
498.....	1751.....	2-8E1-2-8E2.
499.....	1381, 1751, 1753.....	2-6F4, 2-8E1, 2-8E2.
500.....	1751, 1753.....	2-8E1.
501.....	1751-53.....	2-8E1, 2-8E3.
502.....	1751.....	2-8E1.
503.....	1751-52.....	2-8E2, 2-8E3.
504.....	Title 31.....	Title 31.
505.....	1351-52, 1751.....	2-6D1, 2-6D2, 2-8E1.
506.....	1751-52.....	2-8E1.
507.....	1751.....	2-8E2.
508.....	1751.....	2-8E1.
509.....	1752.....	2-8E3.
Ch. 27.—Customs:		
541-42.....	1411.....	2-6G4.
543-45.....	1411; Title 19.....	2-6G4; Title 19.
546.....	Title 22.....	Title 22.
547.....	1411.....	2-6G4.
548.....	1511, Title 19.....	2-6G4; Title 19.
549.....	1411; 1732.....	2-6G4; 2-8D3.
550.....	1352, 1732.....	2-6D2, 2-8D3.
551.....	1323, 1367, 1411.....	2-6B3, 2-6C1, 2-6G4.
552.....	401, 1002.....	1-2A6, 2-9F5.

TABLE 1—COMPARISON TABLES—Continued

Part 1—Crimes—Continued

Present title 18	Commission draft	S. 1
Ch. 29.—Elections and Political Activities:		
591.....	Omitted.....	1-1A4.
592.....	1535.....	2-6H1.
593-94.....	1511, 1531.....	2-6H1, 2-7F3.
595.....	1511, 1531-32.....	2-6H1, 2-7F2, 2-7F3.
596.....	Omitted.....	Omitted.
597.....	1531.....	2-6H1.
598.....	1532.....	2-7F2.
599-600.....	1364-65, 1531.....	2-6E2.
601.....	1511, 1532-33.....	2-6H1, 2-7F2.
602-03.....	1534.....	2-6H2.
604-05.....	1532.....	2-7F2.
606.....	1533.....	2-6E5.
607.....	1534.....	2-6H2.
608-12.....	Title 2.....	Title 2.
613.....	1541.....	2-6H3.
Ch. 31.—Embezzlement and Theft:		
641.....	1732.....	2-8D3.
642.....	1732, 1752.....	2-8D3, 2-8E3.
643.....	1732, 1737; Title 5.....	2-8D3, 2-8D6; Title 5.
644.....	1732, 1737; Title 12.....	2-8D3, 2-8D6; Title 12.
645-47.....	1732, 1737; Title 28.....	2-8D3, 2-8D6; Title 28.
648-53.....	1732, 1737; Title 5.....	2-8D3, 2-8D6; Title 5.
654.....	1732, 1737.....	2-8D3, 2-8D6.
655.....	1732, 1737, 3501.....	1-4A3, 2-8D3, 2-8D6.
656-57.....	1732, 1737.....	2-8D3, 2-8D6.
658.....	1738.....	2-8D7.
659.....	206, 707, 1732, 1737.....	2-8D3, 2-8D6, 3-11B5, 2-8D4.
660.....	707, 1732, 1737.....	2-8D3, 2-8D6, 3-11B5.
661.....	1732, 1737.....	2-8D2, 2-8D3, 2-8D6.
662.....	1732, 1737.....	2-8D4.
663-64.....	1732, 1737.....	2-8D3, 2-8D6.
Ch. 33.—Emblems, Insignia and Names:		
700.....	Title 4.....	2-9G1.
701.....	do.....	Title 4.
702.....	Titles 10, 42.....	Titles 10, 42.
703.....	Title 22.....	Title 22.
704.....	Title 10.....	Title 10.
705-06.....	Title 36.....	Title 36.
707.....	Title 7.....	Title 7.
708.....	Title 22.....	Title 22.
709.....	Title 4.....	2-8F4; Title 4.
710.....	Title 10.....	Title 10.
711.....	Title 7.....	Title 7.
712-13.....	Title 4.....	Title 4.
714.....	Title 43.....	Title 43.
Ch. 35.—Escape and Rescue:		
751.....	1306.....	2-6B5, 1-2A4.
752-53.....	1306.....	2-6B5, 1-2A6, 2-6B3.
754.....	1301.....	2-6B1.
755.....	1306-07.....	Omitted.
756-57.....	1120.....	2-5B11.
Ch. 37.—Espionage and Censorship:		
792.....	1118.....	2-5B10.
793-94.....	1112-13.....	2-5B7, 2-5B8.
795-97.....	1112-13, 1712; Title 50.....	2-5B7, 2-5B8, 2-8C5; Title 50.
798.....	1114.....	2-5B8.
799.....	1712; Title 42.....	2-8C5; Title 42.
Ch. 39.—Explosives and Other Dangerous Articles:		
831.....	Title 49.....	Title 49.
832-34.....	1602, 1613, 1701, 1704; Title 49.....	2-7B3, 2-8B1, 2-8B3; Title 49.
835.....	Title 49.....	Title 49.
836.....	Title 15.....	Title 15.
Ch. 40.—Importing, Manufacturing, Distribution and Storage of Explosive Materials:		
841.....	Title 26.....	Title 26.
842.....	1812; Title 26.....	2-9D3, Title 26.
843.....	Title 26.....	Title 26.
844.....	109(i), 1614, 1618, 1701, 1705, 1811, 1814, 3202(2)(e); Title 26.....	2-7C3, 2-8B1, 2-8B5, 2-9D2, 2-9D5; Title 26.
845-48.....	Title 26.....	Title 26.
Ch. 41.—Extortion and Threats:		
871.....	1614-15.....	2-7C3.
872.....	1381, 1617, 1732-33.....	2-6F4, 2-9C3, 2-9C4.
873.....	1381, 1617, 1732-33.....	2-9C3, 2-9C4.
874.....	1732.....	2-9C3.
875-77.....	1614, 1617-18, 1732-33.....	2-7C3, 2-9C3, 2-9C4.

TABLE I—COMPARISON TABLES—Continued

Part I—Crimes—Continued

Present title 18	Commission draft	S. 1
Ch. 42.—Extortionate Credit Transactions:		
891-96.....	1771.....	2-9C2.
Ch. 43.—False Personation:		
911.....	1352.....	2-6D2.
912-13.....	1381.....	2-6F4.
914.....	1732-33.....	2-8D3.
915.....	1381.....	2-6F4.
916.....	Title 7.....	Title 7.
917.....	Title 36.....	Title 36.
Ch. 44.—Firearms:		
921.....	Title 26.....	Title 26.
922.....	1812; Title 26.....	2-9D3; Title 26.
923.....	Title 26.....	Title 26.
924.....	1811, 3202(2)(e); Title 26.....	2-9D2, 1-4B2(b)(2)(v); Title 26.
925-28.....	Title 26.....	Title 26.
Ch. 45.—Foreign Relations:		
951.....	1206; Title 22.....	2-5C5; Title 22.
952.....	1112-14.....	2-5B7; 2-5B8.
953.....	Omitted.....	Omitted.
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955.....	Title 22.....	Title 22.
956.....	1202.....	2-5C1, 1-2A5.
957.....	1001-02.....	Omitted.
958.....	1203.....	2-5C2.
959.....	1203; Title 22.....	2-5C2; Title 22.
960.....	1201-02.....	2-5C1.
961.....	1204-05; Title 22.....	2-5C3, 2-5C4; Title 22.
962.....	1201, 1204-05; Title 22.....	2-5C1, 2-5C3, 2-5C4; Title 22.
963-64.....	1204-05; Title 22.....	2-5C3, 2-5C4; Title 22.
965.....	1204-05, 1352; Title 22.....	2-5C3, 2-5C4, 2-6D2; Title 22.
966.....	1352; Title 22.....	2-6D2; Title 22.
967.....	1204-05; Title 22.....	2-5C3, 2-5C4; Title 22.
969.....	Title 22.....	Title 22.
970.....	(Not considered).....	(Not considered).
Ch. 47.—Fraud and False Statements:		
1001.....	1352.....	2-6D2.
1002.....	1751.....	2-8E2.
1003.....	1732, 1751.....	2-8D3, 2-8E2.
1004.....	1753; Title 12.....	Title 12.
1005.....	1352, 1732, 1751, 1753; Title 12.....	2-6D2, 2-8D3, 2-E2; Title 12.
1006.....	1352, 1372, 1732, 1751, 1753, 1758; Title 12.....	2-6D2, 2-6F3, 2-8D3, 2-8E2, 2-8F3; Title 12.
1007.....	1352, 1732.....	2-6D2, 2-8D3.
1008.....	1352, 1732, 1751.....	2-6D2, 2-8D3, 2-8E2.
1009.....	Title 12.....	Title 12.
1010.....	1352, 1732, 1751, 1753.....	2-6D2, 2-8D3, 2-8E2.
1011.....	1352, 1732.....	2-6D2, 2-8D3.
1012.....	1352, 1356, 1361; Title 42.....	2-6D2, 2-6D3, 2-6E1; Title 42.
1013.....	1732.....	2-8D3.
1014.....	1352, 1732.....	2-6D2, 2-8D3.
1015.....	1108, 1221, 1224, 1351-52, 1753.....	2-6D2, 2-5D3, 2-5D1.
1016.....	1352, 1753.....	2-6D2.
1017-19.....	1753.....	2-6D2.
1020.....	1352, 1732-33.....	2-6D2, 2-8D3.
1021-22.....	1753.....	2-6D2.
1023.....	1732-1737.....	2-8D3, 2-8D6.
1024.....	1732; Title 10.....	2-8D3; Title 10.
1025.....	1732, 1753.....	2-8D3, 2-6D2.
1026.....	1352.....	2-6D2.
1027.....	1352, 1732-33.....	2-6D2, 2-8D3.
Ch. 49.—Fugitives From Justice:		
1071-72.....	1303.....	2-6B3.
1073-74.....	1310.....	2-6B7.
Ch. 50.—Gambling:		
1081.....	Title 46.....	Title 46.
1082.....	1831; Title 46.....	2-9F1; Title 46.
1083.....	Title 46.....	Title 46.
1084.....	1831-32.....	2-9F1, 2-9F2.
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1112.....	1601-03.....	2-7B3, 2-7B4.
1113.....	1001.....	2-7B1, 2-7B3, 1-2A4.
1114.....	1601-03.....	2-7B1, 2-7B3, 2-7B4.
1115.....	1601-03.....	2-7B4.
1116-17.....	(Not considered).....	[Omitted as separate section.]
Ch. 53.—Indians:		
1151-53.....	211.....	1-1A6(b).
1154-56.....	Title 25.....	Title 25.
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1163.....	1732.....	2-8D3.
1164-65.....	Title 25.....	Title 25.

TABLE I—COMPARISON TABLES—Continued

Part I—Crimes—Continued

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1202.....	1304.....	2-6B3(a)(3).
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1231.....	1551.....	2-77F6.
Ch. 59.—Liquor Traffic:		
1261-65.....	Title 27.....	Title 27.
Ch. 61.—Lotteries:		
1201-03.....	1831-32.....	2-9F1, 2-9F2.
1304-05.....	Omitted.....	Omitted.
1306.....	Title 12.....	Title 12.
Ch. 63.—Mail Fraud:		
1341-43.....	1001, 1732, 1751.....	2-8D5.
Ch. 65.—Malicious Mischief:		
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1362.....	1107, 1705.....	2-5B4, 2-8B5, 2-8B6.
1363.....	1107, 1613, 1704-05.....	2-5B4, 2-8B5, 2-8B6.
1364.....	1701, 1705.....	2-8B1, 2-8B2.
Ch. 67.—Military and Navy:		
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1382.....	1712.....	2-8C5.
1383.....	1712; Title 10.....	2-8C5, Title 10.
1384.....	1841-43.....	2-9F3, 2-9F4.
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Ch. 69.—Nationality and Citizenship:		
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1422.....	1362, 1732.....	2-6E2, 2-8D3.
1423.....	1225, 1352, 1531, 1751, 1753.....	2-5D3, 2-6D2.
1424.....	1221, 1224, 1351-52, 1753.....	2-5D1, 2-5D3, 2-6D1, 2-6D2.
1425.....	1224, 1351-52, 1361, 1753.....	2-5D3, 2-6D1, 2-6D2, 2-8E6.
1426.....	1351-52, 1751-52.....	2-6D1, 2-6D2, 2-8E2, 2-8E3.
1427.....	401, 1002.....	1-206, 2-5D3.
1428.....	Title 8.....	Title 8.
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Ch. 71.—Obscenity:		
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Ch. 73.—Obstruction of Justice:		
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1502.....	1301-02.....	2-6B1, 2-6B2.
1503.....	1301, 1321-24, 1327, 1346, 1366-67.....	2-5B1, 2-6C1, 2-6C3, 2-6F2, 2-6C4 2-6E3, 2-6E4.
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1505.....	1301, 1321-23, 1327, 1346, 1366-67.....	2-6B1, 2-6C1, 2-6F2, 2-6C4, 2-6E3, 2-6E4.
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1507.....	1325.....	2-6C4.
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Ch. 75.—Passports and Visas:		
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3491.....	5002.....	Rule 26.2(a).
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3612.....	5302.....	1-4A4.
3613.....	5303.....	3-10A4.
3614.....	Repealed.....	3-10A4.
3615.....	Title 27.....	Title 27.
3617.....	do.....	Do.
3618.....	do.....	Do.
3619.....	do.....	Do.
3620.....	5304.....	Title 46.

TABLE 1—COMPARISON TABLES—Continued

Part II—Criminal Procedure—Continued

Present title 18	Commission draft	S. 1
Ch. 231.—Probation:		
3651.....	3101 et seq.....	1-4D1, 1-4D2, 1-4D3, Rule 32.1(g).
3652.....	Omitted.....	Rule 32.1(e), (c).
3653.....	5401.....	1-4D3, 1-4D4, 3-10B5, Rule 32.1(i).
3654.....	5402.....	Rule 32.3.
3655.....	5403.....	3-12B1, 3-12F2.
3656.....	5404.....	3-12B2.
Ch. 233.—Contempts:		
3691.....	Rule 42(b).
3692.....	5501.....	Rule 42.1.
3693.....	Omitted.....	Rule 42.
Ch. 235.—Appeal:		
3731.....	5601.....	3-11E1.
3732.....	Omitted.....	Rule 37(a).
3733.....	do.....	Rule 37(a)(1).
3734.....	do.....	Rule 51; 37(a)(1).
3735.....	do.....	Rule 38(a), 45.2(b).
3736.....	do.....	Rule 37(b).
3737.....	do.....	Rule 39(b), 51, 37(a)(1).
3738.....	do.....	Rule 39(c).
3739.....	do.....	Rule 39(a).
3740.....	do.....	Rule 39(d).
3741.....	do.....	Rule 52, 7, 12(b), (2), 30.
Ch. 237.—Rules of Criminal Procedure:		
3771.....	5701.....	3-11A1(a).
3772.....	5702.....	3-11A1(b).

COMPARISON TABLE—TABLE II

INTRODUCTORY NOTE

This table identifies provisions of the United States Code outside of Title 18 which would necessarily be subject to conforming amendments as part of a Federal criminal codification effort. These amendments are contained within Title III of S. 1.

Set forth below, with respect to each Title of the United States Code, are: (1) those sections which will be modified to some extent, but retained within their present format; and (2) those sections currently embodied in Title 18 which will, by force of S. 1, be transferred to other titles in the United States Code.

Title 2. The Congress

Sections Amended By S. 1:

167g 192 241 248 252 269 390

Sections Transferred Into Title 2:

591 608 609 610 611 612

Title 4. Flag and Seal, Seat of Government, and the States

Section Amended By S. 1: 3.

Sections Transferred Into Title 4:

700 701 709 712 713

Title 5. Government Organization and Employees

Sections Amended By S. 1:

304 551 552 555 1507 7313 8125 8312

Sections Transferred Into Title 5:

202	206	218	432	649	653	1917
203	207	219	433	650	1901	1921
204	208	292	643	651	1913	1922
205	209	431	648	652	1916	2075

Title 7. Agriculture

Sections Amended by S. 1:

13	135a	215	499c	608a	1156	1903
13-1	135b	218a	499d	608c	1157	1986
13a	135e	221	499m	608d	1373	2023
13b	135f	222	499n	608e-1	1379i	2044
15	150gg	270	503	610	1380o	2048
59	163	282	511i	615	1433	2105
60	166	472	511k	620	1596	2112
87b	167	473	517	953	1622	2115
87c	195	473c-1	586	1011	1642	2149
87f	203	473c-2	596	1153	1887	2150
96	207	491				

Sections Transferred Into Title 7:

707 711 916 2072

Title 8. Aliens and nationality

Sections amended by S. 1:

333	1185	1281	1306	1326	1357
334	1225	1282	1322	1327	1425
338	1227	1284	1323	1328	1446
339	1251	1286	1324	1330	1451
1182	1252	1304	1325	1356	1481

Section transferred into title 8: 1428.

Title 9. Arbitration

Sections amended by S. 1: 7.

Title 10. Armed Forces

Sections amended by S. 1:

504 2276 2671 4501 7678 9501

Sections transferred into title 10:

244 702 704 710 1024 1383 1385

Title 11. Bankruptcy

Sections amended by S. 1:

32 43 69 104 205

Sections transferred into title 11:

154 155

Title 12. Banks and banking

Sections amended by S. 1:

92a	211	617	1141j	1715z-4	1738	1828
95	374a	630	1458	1725	1750b	1829
95a	378	631	1464	1730	1818	1847
209	582	640i	1713	1730a	1820	1909

Sections transferred into title 12:

212	214	644	1005	1009	1906	1908
213	333	1004	1006	1306	1907	1909

Title 13. Census

Sections amended by S. 1:

211 212 213 214 221 222 223 224 225

Title 14. Coast Guard

Sections amended by S. 1:

83 84 85 89 431 638 639 892

Title 15. Commerce and Trade

Sections Amended By S. 1:

1	70i	79r	155	714m	1175	1244
2	72	79z-3	158	715e	1176	1264
3	76	80a-9	159	715h	1193	1281
8	77	80a-33	235	717m	1194	1282
13a	77v	80a-36	241	717t	1196	1314
20	77x	80a-41	293	1004	1197	1335
24	77yyy	80a-44	298	1007	1200	1611
49	78o	80a-48	377	1024	1212	1674
50	78o-3	80b-3	645	1116	1233	1703
54	78u	80b-9	687b	1172	1242	1714
68h	78ff	80b-17	687f	1173	1243	1717
69i						

Sections transferred into title 15:

836	1761	1762	1821	2074	2318
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Title 16. Conservation

Sections amended by S. 1:

3	170	3	430v	668	776c	954
9a	198c	403h-3	433	668cc-	783	957
25	204c	404c-3	460k-3	4	811	984
45e	256b	408k	460n-5	668dd	825c	989
63	354	413	460n-8	690g	825f	990
98	363	414	462	693a	825o	1029
114	364	422d	471	707	831t	1030
117c	371	423f	551	718e	852	1082
123	373	425g	552d	718g	853	1167
127	374	426i	590n	730	916e	1184
146	395c	428i	606	772e	916f	1246
152	403c-	430g	666a	776b		

Sections Transferred Into Title 16:

41	42	43	44	45	46	47	3054	3112
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Title 17. Copyrights

Sections Amended By S. 1:

14	18	104	105	115
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Title 19. Customs Duties

Sections Amended By S. 1:

60	283	1333	1438	1464	1586	1620
64	468	1341	1445	1465	1599	1708
70	507	1431	1455	1510	1613	1919
81s	1304	1436	1460	1581	1618	1975

Sections Transferred Into Title 19:

543	545	548	1915	2279
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Title 20. Education

Sections Amended By S. 1:

581	867
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Title 21. Food and Drugs

Sections Amended By S.1:

17	143	372a	675	846	885	958
63	145	458	676	847	952	959
104	158	461	677	848	953	960
117	198a	467	841	849	954	961
122	198c	467d	842	850	955	962
127	212	611	843	851	956	963
134e	331	622	844	876	957	964
135a	333	671	845			

Title 22. Foreign relations and intercourse

Sections Amended By S. 1:

253	287c	614	1179	1200	1641k	1643k
254	447	615	1182	1203	1641p	1934
258a	450	618	1198	1623	1642h	2518
277d-21	455	703	1199	1631n	1642m	2584
286f	461					

Sections Transferred Into Title 22:

546	951	961	964	966	969	1544
703	955	962	965	967	1543	1545
708	959	963				

Title 24. Hospitals, asylums, and cemeteries

Sections Amended By S. 1:

50	154	286
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Title 25. Indians

Sections Amended By S. 1:

70b	201	202	399	1323
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Sections Transferred Into Title 25:

437	1154	1158	1161	1165	3242
438	1155	1159	1162	3055	3243
439	1156	1160	1164	3113	3488

Title 26. Internal Revenue Code

Sections Amended By S. 1:

4817	5606	5682	6531	7209	7235	7268
4918	5607	5683	6680	7210	7236	7270
5203	5608	5685	6685	7211	7239	7271
5274	5661	5686	7201	7212	7240	7272
5551	5662	5687	7202	7213	7241	7273
5557	5671	5689	7203	7214	7262	7274
5601	5672	5691	7204	7215	7263	7302
5602	5674	5762	7205	7231	7264	7401
5603	5675	5861	7206	7232	7265	7604
5604	5676	5871	7207	7233	7266	
5605	5681	6065	7208	7234	7267	

Section Transferred Into Title 26:

841	844	847	922	925	928	1202
842	845	848	923	926	3615	1203
843	846	921	924	927	1201	

Title 27. Intoxicating liquors

Sections Amended By S. 1:

202	204	206	207	208
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Sections Transferred Into Title 27:

1261	1262	1263	1264	1265
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Title 28. Judiciary and judicial procedures

Sections Amended By S. 1:

454	1291	1784	1865	1867	1918	2678
636	1355	1864	1866	1869	2321	2901
						2902

Sections Transferred Into Title 28:

243	645	647	1910	2076
491	646	1421	1911	

Title 29. Labor

Sections Amended by S. 1:

161	215	308	439	501	504	530
162	216	308c	461	502	522	629
186	259	308e	463	503	524	

Title 30. Mineral lands and mining

Sections Amended By S. 1:

689	729	733	819
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Title 31. Money and finance

Sections Amended By S. 1:

155	163	243	395	665	1003	1018
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Sections Transferred Into Title 31:

336	337	475	489	492	504
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Title 33. Navigation and navigable waters

Sections Amended By S. 1:

1	368	412	445	499	601	938
2	391-	419	447	502	682	941
3	396	421	448	507	915	990
157a	395	441	449	519	927	1005
158	406	442	452	533	928	1008
244	410	443	474	554	931	
354	411	444	495	555	937	

Title 35. Patents

Sections Amended By S. 1:

24	25	33	186	187	292
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Title 36. Patriotic Societies and Observances

Sections Amended By S. 1:

181	379	728
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Sections Transferred Into Title 36:

705	706	917
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Title 38. Veteran's Benefits

Sections Amended By S. 1:

787	3313	3405	3501	3502	3505
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Section Transferred Into Title 38:

290

Title 39. The Postal Service

Sections Amended By S. 1:

410	3001	5206
602	3003	5403
1008	3008	5603
2201	3011	5604

Sections Transferred Into Title 39:

440	1697	1704	1716A	1723	1728	1733
1692	1698	1712	1717	1724	1729	1734
1693	1699	1713	1718	1725	1730	1735
1694	1700	1715	1721	1726	1731	1736
1695	1703	1716	1722	1727	1732	1737
1696						3061

Title 40. Public Building, Property, and Works

Sections Amended by S. 1:

13m	56	193	193h	212b	332
53	101	193f	193s	318c	

Title 41. Public Contracts

Sections Amended By S. 1:

39	51	54
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Sections Transferred Into Title 41:

435	441	443
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Title 42. The Public Health and Welfare

Sections Amended By S. 1:

246	405	1973g	1973	2000e-	2271	2462
250	406	1973i	aa-3	5	2272	2515
257	408	1857f-4	1973	2000e-	2273	2703
259	1306	1857f-	bb-2	8	2274	3188
261	1307	6	1974	2000e-	2275	3220
262	1400f	1857f-	1974a	10	2276	3425
263	1400s	6c	1975a	2000e-	2277	3426
263i	1422	1973j	1975d	12	2278	3610
263j	1712	1973l	1987	2000g-2	2278a	3611
271	1713	1973	1990	2000h	2278b	3631
402	1874	aa-1	1995	2000h-1	2281	

Sections Transferred Into Title 42:

799	1012
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Title 43. Public Lands

Sections Amended By S. 1:

104	183	255	362	1191	1333
105	254	315a	1064	1212	1334
			1096		

Sections Transferred Into Title 43:

714	1860	1861
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Title 44. Public Printing and Documents

Sections Amended by S. 1:

3508	3511
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Section Transferred Into Title 44:

442

Title 45. Railroads

Sections Amended by S. 1:

39	64a	66	83	228m	355	362
60	65	81	152	354	359	

Title 46. Shipping

Sections Amended by S. 1:

7	142	229e	322	498	709	837
8	143	229f	323	526m	711	838
22	151	232	324	526p	712	839
45	152	235	369	563	728	941
58	154	239	391a	564	738b	119a
59	156a	239c	398	599	738c	1132
62	157	246	403	643	808	1171
77	158	249c	407	652	812	1223
83i	161	251	408	658	815	1224
85f	162	251a	410	660	817b	1225
85g	163	277	413	672	817c	1226
88f	170	316	452	676	820	1228
88g	194	319	471	684	831	1277
91	203	320	481	701	835	1333
101	224a	321	497	707	836	

Sections Transferred Into Title 46:

1081	1082	1083	2195	2274	2277	2278	3620
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Title 47. Telegraphs, telephones, and radiotelegraphs

Sections Amended by S. 1:

13	25	31	203	312	501	508
21	27	33	205	362	502	509
22	28	37	220	386	503	605
23	29	202	223	409	506	606
24	30					

Section Transferred Into Title 47:

2511

Title 48. Territories and Insular Possessions

Sections Amended By S. 1:

1417	1421i	1423f	1424	1461	1572	1704
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Title 49. Transportation

Sections Amended By S. 1:

1	16	46	319	1013	1471	1681
5	19a	47	322	1017	1472	1725
6	20	121	906	1021	1473	
10	20a	305	917	1159	1523	
15	41	314	1010	1378	1679	

Sections Transferred Into Title 49:

831	832	833	834	835
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Title 50. War and National Defense

Sections Amended By S. 1:

23	210	783	797	824	856
167k	217	792	822	843	1436
192	459	794	823	855	

Sections Transferred Into Title 50:

795-797	2386
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Title 50. Appendix, War and National Defense

Sections Amended By S. 1:

3	34	520	535	1152	1985	2155
5	327	522	590	1191	2009	2160
7	460	530	643a	1193	2017g	2165
12	462	531	643b	1215	2017m	2213a
16	468	532	781	1884	2025	2255
19	473	534	783	1941d	2073	2284
						2405

TABLE III.—*Introductory Note*

This table identifies those provisions of S. 1 which are without antecedent in current Federal statutory law. They are identified as with an antecedent in the recommendations of the National Commission on Reform of Federal Criminal Laws or wholly new to S. 1.

The table also identifies proposals advanced by the National Commission, but wholly omitted in S. 1.

	Section—S. 1: New Law	Commission antecedent
1-1A1.	Title.....	×
1-1A2.	General Purposes.....	×
1-1A3.	Principle of Legality; Rule of Construction.....	×
1-2A1.	Culpability.....	×
1-2A2.	Casual Relationship Between Conduct and Result.....	×
1-3B2.	Entrapment.....	×
1-3C1.	Intoxication.....	×
1-3C2.	Mental Illness or Defect.....	×
1-3C3.	Execution of Public Duty.....	×
1-3C4.	Defense of Person or Property.....	×
1-3C5.	Ignorance or Mistake of Fact.....	×
1-3C6.	Ignorance or Mistake of Law.....	×
1-3C7.	Duress.....	×
1-3C8.	Consent.....	×
1-4A3.	Disqualification.....	×
1-4A5.	Joint Sentence.....	New to S. 1.
1-4E2.	Separate Proceeding to Determine Sentence of Death.....	×
2-7B5.	Aiding Suicide.....	New to S. 1.
2-8C3.	Possession of Burglar's Tools.....	Do.
2-8F3.	Environmental Spoliation.....	Do.
2-8F4.	Unfair Commercial Practices.....	Do.
2-F6.	Regulatory Offenses.....	×
3-11C2.	Panel and Examination.....	New to S. 1.
3-11C5.	Determination of Defense of Mental Illness or Defect.....	×
3-11C7.	Disposition of Criminal Charges.....	×
3-11C8.	Civil Commitment.....	New to S. 1.
3-11D1.	Sentencing Recommendation of the Attorney for the Government.....	Do.
3-11D2.	Psychiatric Examination.....	×
3-12F7.	Finality of Parole Determinations.....	×
3-13C1.	Establishment of Criminal Law Reform Commission.....	New to S. 1.
3-13C2.	Duties.....	Do.
3-13C3.	Powers.....	Do.
3-13C4.	Compensation and Exemption of Members.....	Do.
3-13C5.	Staff.....	Do.
3-13C6.	Expenses.....	Do.

OMITTED

COMMISSION RECOMMENDATIONS

Sec.*

- 703. Prosecution for Multiple Related Offenses
- 704. When Prosecution Barred by Former Prosecution for Same Offense
- 705. When Prosecution Barred by Former Prosecution for Different Offense
- 706. Prosecution Under Other Federal Codes
- 707. Former Prosecution In Another Jurisdiction: When a Bar
- 708. Subsequent Prosecution by a Local Government: When Barred
- 709. When Former Prosecution is Invalid or Fraudulently Procured
- 1307. Public Servants Permitting Escape
- 1613. Reckless Endangerment
- 1648. General Provisions for Sections 1641 to 1647 (sex offenses)
- 1848. Testimony of Spouse in Prostitution Offenses
- 1852. Indecent Exposure
- 1861. Disorderly Conduct
- 3003. Persistent Misdemeanants
- 3601. Life Imprisonment Authorized for Certain Offenses

* Section references are to the Final Report of the National Commission on Reform of Federal Criminal Laws.

Mr. McCLELLAN. Mr. President, I would also advise those interested that copies of the bill, S. 1, the "Criminal Justice Codification, Revision, and Reform Act of 1973," are available and that it and the final report of the Commission may be obtained by writing the subcommittee at room 2204, Dirksen Senate Office Building, Washington, D.C. 20510.

Mr. President, I want to emphasize—as a Member of this body—as one who served on the Brown Commission—and as chairman of the Senate Judiciary Subcommittee on Criminal Laws and Procedures—it is not going to be an easy task to process this bill, and we will never succeed in bringing to the floor a bill that will meet with the unanimous approval of the 100 Members of this body. There will have to be some give and take. The bill that we will bring from the subcommittee will have provisions to which I may object or about which I may not be enthusiastic, and that may be true as to each member of the subcommittee and the full Judiciary Committee. But if we are to bring about this reform, again I say that there has to be some give and take. We will have to make up our minds that we are not going to vote against the whole program just because it contains one provision of law or one feature of the bill that we do not like.

I could pick out statutes on the books today that I would like to see reformed; but they are the law of the land, and we must obey them.

I know that I am going to have—and I thank them in advance—the full cooperation and the diligent assistance of all members of the Subcommittee on Criminal Laws and Procedures. We will undertake to expedite these hearings and to get this bill before the Senate at the earliest practical date.

I yield now to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I thank the Senator from Arkansas and I commend him on his excellent presentation, a basic presentation of a very monumental piece of legislation.

Mr. President, as the ranking minority member of the Subcommittee on Criminal Laws and Procedures, I want to take this opportunity to salute our distinguished chairman, the senior Senator from Arkansas (Mr. McClellan), on the introduction of S. 1, the "Criminal Justice Codification, Revision and Reform Act of 1973." The effort necessary to produce this legislative proposal can only be fairly described as Herculean. The bill contains a little over 500 printed pages.

I am honored to join with our distinguished chairman on the bill, as well as the distinguished Senator from North Carolina (Mr. Ervin), who is a cosponsor thereof, just as I am.

The recasting of our Federal criminal laws was early recognized as a long-term project that would require strong bipartisan support and a healthy spirit of reconciliation, good will, and accommodation. The introduction of S. 1 represents a major step toward our goal and reinforces my belief that we shall find ultimate success in the not too distant future. It is my hope that the entire rewriting of title 18 can be concluded and enacted into law as soon as possible.

The idea, indeed the inspiration and basis for S. 1, can be traced to the establishment of the National Commission on Reform of Federal Criminal Laws by the 89th Congress in Public Law 89-801.

The Commission was chaired by the Honorable Edmund G. Brown, former Governor of California. The vice-chairman was Congressman Richard H. Poff of Virginia, the author of the statute creating the Commission, and presently a Justice of the Supreme Court of Appeals of Virginia.

Other members were:

U.S. Circuit Judge George C. Edwards, Jr.

U.S. District Judge A. Leon Higginbotham, Jr.

Congressman Robert W. Kastenmeier.

U.S. District Judge Thomas J. MacBride.

Congressman Abner J. Mikva.

Donald Scott Thomas, Esq.

Theodore Voorhees, Esq.

U.S. Senator John McClellan of Arkansas.

U.S. Senator Sam Ervin of North Carolina.

U.S. Senator Roman Hruska of Nebraska.

In the final report of the National Commission, the 92d Congress was given what the 89th had requested—a broad, comprehensive framework in which to decide the issues involved in recodification and possible reform of the Federal criminal code.

This report was the result of nearly 3 years of deliberation by the Commission, its Advisory Committee, consultants and staff. The Advisory Committee, headed by retired Justice and former Attorney General, Tom C. Clark, consisted of 15 persons with a broad range of experience.

In addition to Justice Clark its members were: Maj. Gen. Charles L. Decker, Hon. Brian P. Gettings, Hon. Patricia Roberts Harris, Fred B. Helms, Esq., Hon. Byron O. House, Hon. Howard R. Leary, Robert M. Morgenthau, Esq., Dean Louis H. Pollak, Cecil E. Poole, Esq., Milton G. Rector, Hon. Elliot L. Richardson, Gus Tyler, Prof. James Vorenberg, William F. Walsh, Esq., Prof. Marvin E. Wolfgang.

Working with a budget of \$850,000 and a staff of some 50, headed by Prof. Louis B. Schwartz of the University of Pennsylvania Law School, the Commission worked through preliminary memoranda and drafts in periodic discussion meetings. Reports of other bodies were used extensively, such as the President's Commission on Law Enforcement and Administration of Justice, the National Commission on Causes and Prevention of Violence, the National Advisory Commission on Civil Disorders, the American Bar Association Project on Standards for Criminal Justice, the American Law Institute, the National Council on Crime and Delinquency and numerous State penal law revision commissions.

At the conclusion of this first phase of intensive study, the Commission published the study draft of June 1970 in order to secure the benefit of public criticism before the Commission made its decisions. The comments submitted in response to the circulation of 5,000 copies of the study draft greatly aided the members of the Commission as they met again and again to determine the final shape and scope of the Report.

The final report was submitted to the President and to Congress on January 7, 1971. It was made clear in the letter transmitting this report that no Commissioner is committed to every feature of the proposed code. However, each of us, I believe, is convinced that the great bulk of the proposal has great merit as a basis and vehicle for legislation. We desire enactment of a total revision of title 18 at the earliest possible opportunity.

Such an effort runs no risk of redundancy. Since the enactment of our first set of criminal laws in 1790 (1 Stat. 112, Crime Act of 1790) this Nation has never legislated a comprehensive reform of its criminal laws. There have been occasional revisionary—essentially editorial—efforts, the last one over two decades ago (Act of June 25, 1948, 62 Stat. 683). And since that modest undertaking, Congress has enacted in title 18 alone over 250 separate Federal offenses, *seriatim*. The consequence is that the Federal criminal laws are riddled with anomalies and their efficacy is frustrated.

In January of 1971, President Nixon publicly commended the Commission and requested that the Department of Justice create a special unit of experienced Department attorneys to undertake an evaluation of the Commission's many suggestions and further to make the results of their evaluation available to the appropriate committees of the Congress in a close and cooperative spirit.

The hearings and studies conducted by the Criminal Laws Subcommittee during the 92d Congress and the bill under discussion have added greatly to the knowledge and options available in the field of criminal law codification.

Under the direction of former Attorney General Mitchell and the present Attorney General Richard Kleindeinst, the Department of Justice has devoted enormous resources over the last 2 years to the task of reconstructing title 18 to meet the needs of our criminal justice system, in a modern setting. This was, of course, facilitated by the often expressed interest of the President in this venture.

The administration's bill will be forwarded to the Congress shortly. That proposal and S. 1 will provide the primary vehicles to which the Criminal Laws Subcommittee can turn in the coming months.

With this preliminary work completed it is essential that we not lose the opportunity to capitalize on and build upon the accomplishments up to this date. It is my hope that the Senate and the other body will seize this chance to make a significant contribution to Federal law by enacting during the 93d Congress an entirely new—both in form and substance—criminal code.

Much remains to be done if we are to fashion this new code and draw together the best of past experience and the best of innovation into a worka-

ble, comprehensive and scholarly code. This will be the task of the 93d Congress.

This Senator is not at this time willing to give a blanket endorsement to S. 1, nor the administration bill which will be forthcoming. In discussing its provisions with my colleagues over the past 2 years, different approaches to some fundamental problems have developed. This is as it should be when such a vast and complex subject is discussed. Of course, I am still open to suggestion on these problems just as I am sure other members of the committee are. Just as the subcommittee hearings during the 92d Congress have been very useful. I look forward to the upcoming ones. It will be our duty during the 93d Congress to diligently explore S. 1 and the administration's bill, as well as the suggestions presented by outside experts, and to come up with the best bill possible. I intend to do everything that I can to assist the chairman in this task.

It is essential that our future efforts not be politicized or polarized on single issues and that we proceed cautiously, but with deliberate speed. This revision is more important than any single issue and it should be approved even if all concerned cannot agree on each section and aspect of the new code. As the Senator from Michigan (Mr. Hart), a member of the committee stated on one occasion, "we ought not to keep the whole reform as ransom" to any single notion of what the law should be—see Hearings at 111 Vol. I. Governor Brown supported this view by saying that however the controversial questions are settled,

"the work, the real work, of the Commission, the work of codification should go forward." (Id. at 95.)

Mr. President, since my appointment to the National Commission, I have spent a great deal of time considering the proper form Federal criminal law should take in this Nation. This is a compelling issue that touches the lives of most citizens in one way or another, and the lives of some citizens to an overwhelming degree. During the deliberations of the Commission and later the subcommittee, we have been exposed to some remarkable new thinking in this field which has been incorporated into both the Final Report of the Commission and now S. 1. Many of these ideas have much merit. Their adoption will result in a more fair, a more compassionate, a more effective, a more balanced, and a more workable criminal justice system. This should be our ultimate goal.

Of course, in other instances I am content to walk some of the more traditional paths of current law.

The work of the subcommittee in this field is one of the most important tasks that confronts this Congress. I am anxious to get on with our work in concert with my able colleagues; we can look forward to its challenges and the consequences that will flow from it. The text of S. 1 will be of material benefit to our work, and once again I congratulate our chairman and the subcommittee staff on this excellent bill because it was they who principally worked this out to the form which it enjoys today.

In my commendations I wish to include, of course, the Senator from North Carolina because certainly without those two Senators we would not have had that continuing and diligent interest in this subject which was necessary in order to have made as much progress as we have made, but it will take a continuing, abiding, and a persistent interest in the months ahead to finish the job, but I am confident this Congress can and will reach the point of enactment in due time.

Mr. McCLELLAN. Mr. President, I yield to the distinguished Senator from North Carolina (Mr. Ervin).

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. ERVIN. Mr. President, on January 4, 1973, Senator John McClellan, Senator Roman Hruska, and I jointly introduced S. 1, a bill to codify, revise and reform the Federal criminal law and procedure.

I would like to take this occasion to commend the work of all members of the National Code Commission, the work of all members of the staff of the Subcommittee on Criminal Laws and Procedures, and especially the chairman of the subcommittee, who is also a member of the Code Commission, and the ranking minority member of the committee, Senator Hruska, who is also a member of the Code Commission.

I would also like to express my personal appreciation to a distinguished North Carolina lawyer, Fred B. Helms, of Charlotte, N.C., who rendered great service as a member of the advisory committee to the Commission, and also to Robert B. Smith, now Chief Counsel of the Government Operations Committee, for the assistance he gave me as a member of the National Code Commission in the study of these proposed reforms, and to Bill Pursley, who has since that time assisted me materially in the study of this bill.

I have joined in sponsoring S. 1 because I believe it represents a reasonable blueprint from which the Congress can begin a comprehensive consideration of reform of the Federal criminal law. I do not support every provision incorporated in the bill. Indeed, I have serious reservations with respect to several sections of the bill as presently drafted. Nevertheless, having served as a member of the National Commission on Reform of Federal Criminal Laws, with Senator McClellan and Senator Hruska, and having worked closely with these Senators in the preparation of S. 1, I am satisfied that it is a thoughtful beginning in what will certainly be a very important and demanding task—reform of the Federal criminal law.

S. 1 is based upon a comprehensive study of the Federal criminal law undertaken by the National Commission on Reform of Federal Criminal Laws. Established by Congress in 1966, the Commission was directed to make recommendations to Congress which would improve our system of criminal justice. On January 7, 1971, the Commission submitted to the President and Congress its final report. During 1971 and 1972, the Senate Subcommittee on Criminal Laws and Procedures conducted hearings to examine and consider the Commission's recommendations. Members of Congress, judges, Justice Department officials, professional associations, law school professors, citizens groups and others participated in these hearings and offered a wide variety of suggestions with respect to reform of the Federal criminal law. The time has now arrived for Congress to proceed with a serious and careful effort to translate these studies and recommendations into legislation.

Incorporated in S. 1 are new approaches to Federal criminal jurisdiction, to definitions of Federal crimes, to sentencing, and to the general organization of Federal criminal law. A major effort has been made in S. 1 to simplify the terminology of Federal criminal statutory provisions so that a more rational and unified body of law can be established. In addition there are important substantive alterations from present law as to what constitutes Federal criminal conduct. These and other aspects of S. 1 merit and require careful congressional consideration.

There are provisions in the present draft of S. 1 about which I have considerable concern. I intend to study carefully the proposed sections with respect to crimes pertaining to the national security, the disclosure of confidential information, and the dissemination of obscene material. Provisions relating to the interception of communications, provisions dealing with the death penalty, the proposal for appellate review of sentences, the system for classification of sentences, the section on organizational criminal liability, juvenile delinquency, election fraud, and immunity of witnesses also require special study in my opinion. Furthermore, I am concerned about the redesignation of certain provisions now in title 18, such as the Bail Reform Act of 1966, as Federal Rules of Criminal Procedure. Such a redesignation raises questions with respect to the authority of the Supreme Court to modify congressional action with respect to criminal procedure.

It is my understanding that there will be comprehensive committee hearings on S. 1 and any other such proposals which may be introduced in this session of Congress. I am confident that such hearings and continuing study of S. 1 by Members of Congress will result ultimately in wise legislation which will improve our system of criminal justice. Although I am not satisfied with a number of the provisions of S. 1 as presently drafted, I believe this bill does represent a reasonable starting point for the Congress as it proceeds to address the pressing problems associated with crime in our country.

I would like to express my complete agreement with the statements made by the distinguished Senator from North Carolina (Mr. McClellan) and the distinguished Senator from Nebraska (Mr. Hruska) with respect to the herculean nature of the task which confronts the subcommittee, the full Judiciary Committee, the Senate, and the Congress ultimately, in connection with this legisla-

tion. As they have stated, it will not be possible in a legislative proposal of this scope for the subcommittee or the full committee to bring out for the consideration of the Senate a bill which will meet with the approval in all respects, of all the members, of either the subcommittee or the full committee of the Senate, but it is essential that the criminal laws of this Nation be reformed and I think Congress must be prepared to pass a bill which will accomplish these reforms even though some of the provisions of the bill may not commend themselves to many members of Congress and many members of the subcommittee and many members of the full Judiciary Committee.

I would like to reiterate in closing that the Nation owes a great debt of gratitude to many men and women in connection with this legislative proposal and that it is especially indebted to the distinguished Senator from Arkansas (Mr. McClellan) and the distinguished Senator from Nebraska (Mr. Hruska).

Mr. McCLELLAN. Mr. President, I want to thank my distinguished colleagues for the remarks they have made this afternoon, and I certainly join with them in commendation of the staff that has worked so faithfully on the subcommittee for the help they have given us. We must rely upon them heavily, and they are meeting their responsibilities most effectively, most efficiently, and most courteously, and I appreciate it very much. I wanted the Record to so reflect.

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FEDERAL SYSTEM OF CRIMINAL
JUSTICE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SIXTH IN A SERIES OF REPORTS ON THE STATE
OF THE UNION, CONCERNING THE FEDERAL SYSTEM
OF CRIMINAL JUSTICE



MARCH 14, 1973.—Message referred to the Committee on the Judiciary
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LETTER OF TRANSMITTAL

To the Congress of the United States:

This sixth message to the Congress on the State of the Union concerns our Federal system of criminal justice. It discusses both the progress we have made in improving that system and the additional steps we must take to consolidate our accomplishments and to further our efforts to achieve a safe, just, and law-abiding society.

In the period from 1960 to 1968 serious crime in the United States increased by 122 percent according to the FBI's Uniform Crime Index. The rate of increase accelerated each year until it reached a peak of 17 percent in 1968.

In 1968 one major public opinion poll showed that Americans considered lawlessness to be the top domestic problem facing the Nation. Another poll showed that four out of five Americans believed that "Law and order has broken down in this country." There was a very real fear that crime and violence were becoming a threat to the stability of our society.

The decade of the 1960s was characterized in many quarters by a growing sense of permissiveness in America—as well intentioned as it was poorly reasoned—in which many people were reluctant to take the steps necessary to control crime. It is no coincidence that within a few years' time, America experienced a crime wave that threatened to become uncontrollable.

This Administration came to office in 1969 with the conviction that the integrity of our free institutions demanded stronger and firmer crime control. I promised that the wave of crime would not be the wave of the future. An all-out attack was mounted against crime in the United States.

- The manpower of Federal enforcement and prosecution agencies was increased.
- New legislation was proposed and passed by the Congress to put teeth into Federal enforcement efforts against organized crime, drug trafficking, and crime in the District of Columbia.
- Federal financial aid to State and local criminal justice systems—a forerunner of revenue sharing—was greatly expanded through Administration budgeting and Congressional appropriations, reaching a total of \$1.5 billion in the three fiscal years from 1970 through 1972.

These steps marked a clear departure from the philosophy which had come to dominate Federal crime fighting efforts, and which had brought America to record-breaking levels of lawlessness. Slowly, we began to bring America back. The effort has been long, slow, and difficult. In spite of the difficulties, we have made dramatic progress.

In the last four years the Department of Justice has obtained convictions against more than 2,500 organized crime figures, including a number of bosses and under-bosses in major cities across the country. The pressure on the underworld is building constantly.

Today, the capital of the United States no longer bears the stigma of also being the Nation's crime capital. As a result of decisive reforms in the criminal justice system the serious crime rate has been cut in half in Washington, D.C. From a peak rate of more than 200 serious crimes per day reached during one month in 1969, the figure has been cut by more than half to 93 per day for the latest month of record in 1973. Felony prosecutions have increased from 2,100 to 3,800, and the time between arrest and trial for felonies has fallen from ten months to less than two.

Because of the combined efforts of Federal, State, and local agencies, the wave of serious crime in the United States is being brought under control. Latest figures from the FBI's Uniform Crime Index show that serious crime is increasing at the rate of only one percent a year—the lowest recorded rate since 1960. A majority of cities with over 100,000 population have an actual reduction in crime.

These statistics and these indices suggest that our anti-crime program is on the right track. They suggest that we are taking the right measures. They prove that the only way to attack crime in America is the way crime attacks our people—without pity. Our program is based on this philosophy, and it is working.

Now we intend to maintain the momentum we have developed by taking additional steps to further improve law enforcement and to further protect the people of the United States.

Law Enforcement Special Revenue Sharing

Most crime in America does not fall under Federal jurisdiction. Those who serve in the front lines of the battle against crime are the State and local law enforcement authorities. State and local police are supported in turn by many other elements of the criminal justice system, including prosecuting and defending attorneys, judges, and probation and corrections officers. All these elements need assistance and some need dramatic reform, especially the prison systems.

While the Federal Government does not have full jurisdiction in the field of criminal law enforcement, it does have a broad, constitutional responsibility to insure domestic tranquility. I intend to meet that responsibility.

At my direction, the Law Enforcement Assistance Administration (LEAA) has greatly expanded its efforts to aid in the improvement of State and local criminal justice systems. In the last three years of the previous Administration, Federal grants to State and local law enforcement authorities amounted to only \$22 million. In the first three years of my Administration, this same assistance totaled more than \$1.5 billion—more than 67 times as much. I consider this money to be an investment in justice and safety on our streets, an investment which has been yielding encouraging dividends.

But the job has not been completed. We must now act further to improve the Federal role in the granting of aid for criminal justice. Such improvement can come with the adoption of Special Revenue Sharing for law enforcement.

I believe the transition to Special Revenue Sharing for law enforcement will be a relatively easy one. Since its inception, the LEAA has given block grants which allow State and local authorities somewhat greater discretion than does the old-fashioned categorical grant system. But States and localities still lack both the flexibility and the

clear authority they need in spending Federal monies to meet their law enforcement challenges.

Under my proposed legislation, block grants, technical assistance grants, manpower development grants, and aid for correctional institutions would be combined into one \$680 million Special Revenue Sharing fund which would be distributed to States and local governments on a formula basis. This money could be used for improving any area of State and local criminal justice systems.

I have repeatedly expressed my conviction that decisions affecting those at State and local levels should be made to the fullest possible extent at State and local levels. This is the guiding principle behind revenue sharing. Experience has demonstrated the validity of this approach and I urge that it now be fully applied to the field of law enforcement and criminal justice.

The Criminal Code Reform Act

The Federal criminal laws of the United States date back to 1790 and are based on statutes then pertinent to effective law enforcement. With the passage of new criminal laws, with the unfolding of new court decisions interpreting those laws, and with the development and growth of our Nation, many of the concepts still reflected in our criminal laws have become inadequate, clumsy, or outmoded.

In 1966, the Congress established the National Commission on Reform of the Federal Criminal Laws to analyze and evaluate the criminal Code. The Commission's final report of January 7, 1971, has been studied and further refined by the Department of Justice, working with the Congress. In some areas this Administration has substantial disagreements with the Commission's recommendations. But we agree fully with the almost universal recognition that modification of the Code is not merely desirable but absolutely imperative.

Accordingly, I will soon submit to the Congress the Criminal Code Reform Act aimed at a comprehensive revision of existing Federal criminal laws. This act will provide a rational, integrated code of Federal criminal law that is workable and responsive to the demands of a modern Nation.

The act is divided into three parts:

- 1—general provisions and principles,
- 2—definitions of Federal offenses, and
- 3—provisions for sentencing.

Part 1 of the Code establishes general provisions and principles regarding such matters as Federal criminal jurisdiction, culpability, complicity, and legal defenses, and contains a number of significant innovations. Foremost among these is a more effective test for establishing Federal criminal jurisdiction. Those circumstances giving rise to Federal jurisdiction are clearly delineated in the proposed new Code and the extent of jurisdiction is clearly defined.

I am emphatically opposed to encroachment by Federal authorities on State sovereignty, by unnecessarily increasing the areas over which the Federal Government asserts jurisdiction. To the contrary, jurisdiction has been relinquished in those areas where the States have demonstrated no genuine need for assistance in protecting their citizens.

In those instances where jurisdiction is expanded, care has been taken to limit that expansion to areas of compelling Federal interest

which are not adequately dealt with under present law. An example of such an instance would be the present law which states that it is a Federal crime to travel in interstate commerce to bribe a witness in a State court proceeding, but it is not a crime to travel in interstate commerce to threaten or intimidate the same witness, though intimidation might even take the form of murdering the witness.

The Federal interest is the same in each case—to assist the State in safeguarding the integrity of its judicial processes. In such a case, an extension of Federal jurisdiction is clearly warranted and is provided for under my proposal.

The rationalization of jurisdictional bases permits greater clarity of drafting, uniformity of interpretation, and the consolidation of numerous statutes presently applying to basically the same conduct.

For example, title 18 of the criminal Code as presently drawn, lists some 70 theft offenses—each written in a different fashion to cover the taking of various kinds of property in different jurisdictional situations. In the proposed new Code, these have been reduced to 5 general sections. Almost 80 forgery, counterfeiting, and related offenses have been replaced by only 3 sections. Over 50 statutes involving perjury and false statements have been reduced to 7 sections. Approximately 70 arson and property destruction offenses have been consolidated into 4 offenses.

Similar changes have been made in the Code's treatment of culpability. Instead of 79 undefined terms or combinations of terms presently found in title 18, the Code uses four clearly defined terms.

Another major innovation reflected in Part One is a codification of general defenses available to a defendant. This change permits clarification of areas in which the law is presently confused and, for the first time, provides uniform Federal standards for defense.

The most significant feature of this chapter is a codification of the "insanity" defense. At present the test is determined by the courts and varies across the country. The standard has become so vague in some instances that it has led to unconscionable abuse by defendants.

My proposed new formulation would provide an insanity defense only if the defendant did not know what he was doing. Under this formulation, which has considerable support in psychiatric and legal circles, the only question considered germane in a murder case, for example, would be whether the defendant knew that he was pulling the trigger of a gun. Questions such as the existence of a mental disease or defect and whether the defendant requires treatment or deserves imprisonment would be reserved for consideration at the time of sentencing.

Part Two of the Code consolidates the definitions of all Federal felonies, as well as certain related Federal offenses of a less serious character. Offenses and, in appropriate instances, specific defenses, are defined in simple, concise terms, and those existing provisions found to be obsolete or unusable have been eliminated—for example, operating a pirate ship on behalf of a "foreign prince," or detaining a United States carrier pigeon. Loopholes in existing law have been closed—for example, statutes concerning the theft of union funds, and new offenses have been created where necessary, as in the case of leaders of organized crime.

We have not indulged in changes merely for the sake of changes. Where existing law has proved satisfactory and where existing statu-

tory language has received favorable interpretation by the courts, the law and the operative language have been retained. In other areas, such as pornography, there has been a thorough revision to reassert the Federal interest in protecting our citizens.

The reforms set forth in Parts One and Two of the Code would be of little practical consequence without a more realistic approach to those problems which arise in the post-conviction phase of dealing with Federal offenses.

For example, the penalty structure prescribed in the present criminal Code is riddled with inconsistencies and inadequacies. Title 18 alone provides 18 different terms of imprisonment and 14 different fines, often with no discernible relationship between the possible term of imprisonment and the possible levying of a fine.

Part Three of the new Code classifies offenses into 8 categories for purposes of assessing and levying imprisonment and fines. It brings the present structure into line with current judgments as to the seriousness of various offenses and with the best opinions of penologists as the efficacy of specific penalties. In some instances, more stringent sanctions are provided. For example, sentences for arson are increased from 5 to 15 years. In other cases penalties are reduced. For example, impersonating a foreign official carries a three year sentence, as opposed to the 10 year term originally prescribed.

To reduce the possibility of unwarranted disparities in sentencing, the Code establishes criteria for the imposition of sentence. At the same time, it provides for parole supervision after all prison sentences, so that even hardened criminals who serve their full prison terms will receive supervision following their release.

There are certain crimes reflecting such a degree of hostility to society that a decent regard for the common welfare requires that a defendant convicted of those crimes be removed from free society. For this reason my proposed new Code provides mandatory minimum prison terms for trafficking in hard narcotics; it provides mandatory minimum prison terms for persons using dangerous weapons in the execution of a crime; and it provides mandatory minimum prison sentences for those convicted as leaders of organized crime.

The magnitude of the proposed revision of the Federal criminal Code will require careful detailed consideration by the Congress. I have no doubt this will be time-consuming. There are, however, two provisions in the Code which I feel require immediate enactment. I have thus directed that provisions relating to the death penalty and to heroin trafficking also be transmitted as separate bills in order that the Congress may act more rapidly on these two measures.

Death Penalty

The sharp reduction in the application of the death penalty was a component of the more permissive attitude toward crime in the last decade.

I do not contend that the death penalty is a panacea that will cure crime. Crime is the product of a variety of different circumstances—sometimes social, sometimes psychological—but it is committed by human beings and at the point of commission it is the product of that individual's motivation. If the incentive not to commit crime is stronger than the incentive to commit it, then logic suggests that crime will be reduced. It is in part the entirely justified feeling

of the prospective criminal that he will not suffer for his deed which, in the present circumstances, helps allow those deeds to take place.

Federal crimes are rarely "crimes of passion." Airplane hi-jacking is not done in a blind rage; it has to be carefully planned. The use of incendiary devices and bombs is not a crime of passion, nor is kidnapping; all these must be thought out in advance. At present those who plan these crimes do not have to include in their deliberations the possibility that they will be put to death for their deeds. I believe that in making their plans, they should have to consider the fact that if a death results from their crime, they too may die.

Under those conditions, I am confident that the death penalty can be a valuable deterrent. By making the death penalty available, we will provide Federal enforcement authorities with additional leverage to dissuade those individuals who may commit a Federal crime from taking the lives of others in the course of committing that crime.

Hard experience has taught us that with due regard for the rights of all—including the right to life itself—we must return to a greater concern with protecting those who might otherwise be the innocent victims of violent crime than with protecting those who have committed those crimes. The society which fails to recognize this as a reasonable ordering of its priorities must inevitably find itself, in time, at the mercy of criminals.

America was heading in that direction in the last decade, and I believe that we must not risk returning to it again. Accordingly, I am proposing the re-institution of the death penalty for war-related treason, sabotage, and espionage, and for all specifically enumerated crimes under Federal jurisdiction from which death results.

The Department of Justice has examined the constitutionality of the death penalty in the light of the Supreme Court's recent decision in *Furman v. Georgia*. It is the Department's opinion that *Furman* holds unconstitutional the imposition of the death penalty only insofar as it is applied arbitrarily and capriciously. I believe the best way to accommodate the reservations of the Court is to authorize the automatic imposition of the death penalty where it is warranted.

Under the proposal drafted by the Department of Justice, a hearing would be required after the trial for the purpose of determining the existence or nonexistence of certain rational standards which delineate aggravating factors or mitigating factors.

Among those mitigating factors which would preclude the imposition of a death sentence are the youth of the defendant, his or her mental capacity, or the fact that the crime was committed under duress. Aggravating factors include the creation of a grave risk of danger to the national security, or to the life of another person, or the killing of another person during the commission of one of a circumscribed list of serious offenses, such as treason, kidnapping, or aircraft piracy.

The hearing would be held before the judge who presided at the trial and before either the same jury or, if circumstances require, a jury specially impaneled. Imposition of the death penalty by the judge would be mandatory if the jury returns a special verdict finding the existence of one or more aggravating factors and the absence of any mitigating factor. The death sentence is *prohibited* if the jury finds the existence of one or more mitigating factors.

Current statutes containing the death penalty would be amended to eliminate the requirement for jury recommendation, thus limiting the imposition of the death penalty to cases in which the legislative guidelines for its imposition clearly require it, and eliminating arbitrary and capricious application of the death penalty which the Supreme Court has condemned in the *Furman* case.

Drug Abuse

No single law enforcement problem has occupied more time, effort and money in the past four years than that of drug abuse and drug addiction. We have regarded drugs as "public enemy number one," destroying the most precious resource we have—our young people—and breeding lawlessness, violence and death.

When this Administration assumed office in 1969, only \$82 million was budgeted by the Federal Government for law enforcement, prevention, and rehabilitation in the field of drug abuse.

Today that figure has been increased to \$785 million for 1974—nearly 10 times as much. Narcotics production has been disrupted, more traffickers and distributors have been put out of business, and addicts and abusers have been treated and started on the road to rehabilitation.

Since last June, the supply of heroin on the East Coast has been substantially reduced. The scarcity of heroin in our big Eastern cities has driven up the price of an average "fix" from \$4.31 to \$9.88, encouraging more addicts to seek medical treatment. At the same time the heroin content of that fix has dropped from 6.5 to 3.7 percent.

Meanwhile, through my Cabinet Committee on International Narcotics Control, action plans are underway to help 59 foreign countries develop and carry out their own national control programs. These efforts, linked with those of the Bureau of Customs and the Bureau of Narcotics and Dangerous Drugs, have produced heartening results.

Our worldwide narcotics seizures almost tripled in 1972 over 1971. Seizures by our anti-narcotics allies abroad are at an all-time high.

In January, 1972, the French seized a half-ton of heroin on a shrimp boat headed for this country. Argentine, Brazilian and Venezuelan agents seized 285 pounds of heroin in three raids in 1972, and with twenty arrests crippled the existing French-Latin American connection. The ringleader was extradited to the U.S. by Paraguay and has just begun to serve a 20-year sentence in Federal prison.

Thailand's Special Narcotics Organization recently seized a total of almost eleven tons of opium along the Burmese border, as well as a half-ton of morphine and heroin.

Recently Iran scored the largest opium seizure on record—over 12 tons taken from smugglers along the Afghanistan border.

Turkey, as a result of a courageous decision by the government under Prime Minister Erim in 1971, has prohibited all cultivation of opium within her borders.

These results are all the more gratifying in light of the fact that heroin is wholly a foreign import to the United States. We do not grow opium here; we do not produce heroin here; yet we have the largest addict population in the world. Clearly we will end our problem faster with continued foreign assistance.

Our domestic accomplishments are keeping pace with international efforts and are producing equally encouraging results. Domestic drug

seizures, including seizures of marijuana and hashish, almost doubled in 1972 over 1971. Arrests have risen by more than one-third and convictions have doubled.

In January of 1972, a new agency, the Office of Drug Abuse Law Enforcement (DALE), was created within the Department of Justice. Task forces composed of investigators, attorneys, and special prosecuting attorneys have been assigned to more than forty cities with heroin problems. DALE now arrests pushers at the rate of 550 a month and has obtained 750 convictions.

At my direction, the Internal Revenue Service (IRS) established a special unit to make intensive tax investigations of suspected domestic traffickers. To date, IRS has collected \$18 million in currency and property, assessed tax penalties of more than \$100 million, and obtained 25 convictions. This effort can be particularly effective in reaching the high level traffickers and financiers who never actually touch the heroin, but who profit from the misery of those who do.

The problem of drug abuse in America is not a law enforcement problem alone. Under my Administration, the Federal Government has pursued a balanced, comprehensive approach to ending this problem. Increased law enforcement efforts have been coupled with expanded treatment programs.

The Special Action Office for Drug Abuse Prevention was created to aid in preventing drug abuse before it begins and in rehabilitating those who have fallen victim to it.

In each year of my Administration, more Federal dollars have been spent on treatment, rehabilitation, prevention, and research in the field of drug abuse than has been budgeted for law enforcement in the drug field.

The Special Action Office for Drug Abuse Prevention is currently developing a special program of Treatment Alternatives to Street Crime (TASC) to break the vicious cycle of addiction, crime, arrest, bail, and more crime. Under the TASC program, arrestees who are scientifically identified as heroin-dependent may be assigned by judges to treatment programs as a condition for release on bail, or as a possible alternative to prosecution.

Federally funded treatment programs have increased from sixteen in January, 1969, to a current level of 400. In the last fiscal year, the Special Action Office created more facilities for treating drug addiction than the Federal Government had provided in all the previous fifty years.

Today, federally funded treatment is available for 100,000 addicts a year. We also have sufficient funds available to expand our facilities to treat 250,000 addicts if required.

Nationwide, in the last two years, the rate of new addiction to heroin registered its first decline since 1964. This is a particularly important trend because it is estimated that one addict "infects" six of his peers.

The trend in narcotic-related deaths is also clearly on its way down. My advisers report to me that virtually complete statistics show such fatalities declined approximately 6 percent in 1972 compared to 1971.

In spite of these accomplishments, however, it is still estimated that one-third to one-half of all individuals arrested for street crimes continue to be narcotics abusers and addicts. What this suggests is that

in the area of enforcement we are still only holding our own, and we must increase the tools available to do the job.

The work of the Special Action Office for Drug Abuse Prevention has aided in smoothing the large expansion of Federal effort in the area of drug treatment and prevention. Now we must move to improve Federal action in the area of law enforcement.

Drug abuse treatment specialists have continuously emphasized in their discussions with me the need for strong, effective law enforcement to restrict the availability of drugs and to punish the pusher.

One area where I am convinced of the need for immediate action is that of jailing heroin pushers. Under the Bill Reform Act of 1966, a Federal judge is precluded from considering the danger to the community when setting bail for suspects arrested for selling heroin. The effect of this restriction is that many accused pushers are immediately released on bail and are thus given the opportunity to go out and create more misery, generate more violence, and commit more crimes while they are waiting to be tried for these same activities.

In a study of 422 accused violators, the Bureau of Narcotics and Dangerous Drugs found that 71 percent were freed on bail for a period ranging from three months to more than one year between the time of arrest and the time of trial. Nearly 40 percent of the total were free for a period ranging from one-half year to more than one year. As for the major cases, those involving pushers accused of trafficking in large quantities of heroin, it was found that one-fourth were free for over three months to one-half year; one-fourth were free for one-half year to one year; and 16 percent remained free for over one year prior to their trial.

In most cases these individuals had criminal records. One-fifth had been convicted of a previous drug charge and a total of 64 percent had a record of prior felony arrests. The cost of obtaining such a pre-trial release in most cases was minimal; 19 percent of the total sample were freed on personal recognizance and only 23 percent were required to post bonds of \$10,000 or more.

Sentencing practices have also been found to be inadequate in many cases. In a study of 955 narcotics drug violators who were arrested by the Bureau of Narcotics and Dangerous Drugs and convicted in the courts, a total of 27 percent received sentences other than imprisonment. Most of these individuals were placed on probation.

This situation is intolerable. I am therefore calling upon the Congress to promptly enact a new Heroin Trafficking Act.

The first part of my proposed legislation would increase the sentences for *heroin* and *morphine* offenses.

For a first offense of *trafficking* in less than four ounces of a mixture or substance containing heroin or morphine, it provides a mandatory sentence of not less than five years nor more than fifteen years. For a first offense of trafficking in four or more ounces, it provides a mandatory sentence of not less than ten years or for life.

For those with a prior felony narcotic conviction who are convicted of trafficking in less than four ounces, my proposed legislation provides a mandatory prison term of ten years to life imprisonment. For second offenders who are convicted of trafficking in *more* than four ounces, I am proposing a mandatory sentence of life imprisonment without parole.

While four ounces of a heroin mixture may seem a very small amount to use as the criterion for major penalties, that amount is actually worth 12-15,000 dollars and would supply about 180 addicts for a day. Anyone selling four or more ounces cannot be considered a small time operator.

For those who are convicted of *possessing* large amounts of heroin but cannot be convicted of trafficking, I am proposing a series of lesser penalties.

To be sure that judges actually apply these tough sentences, my legislation would provide that the mandatory minimum sentences cannot be suspended, nor probation granted.

The second portion of my proposed legislation would deny pre-trial release to those charged with trafficking in heroin or morphine unless the judicial officer finds that release will not pose a danger to the persons or property of others. It would also prohibit the release of anyone convicted of one of the above felonies who is awaiting sentencing or the results of an appeal.

These are very harsh measures, to be applied within very rigid guidelines and providing only a minimum of sentencing discretion to judges. But circumstances warrant such provisions. All the evidence shows that we are now doing a more effective job in the areas of enforcement and rehabilitation. In spite of this progress, however, we find an intolerably high level of street crime being committed by addicts. Part of the reason, I believe, lies in the court system which takes over after drug pushers have been apprehended. The courts are frequently little more than an escape hatch for those who are responsible for the menace of drugs.

Sometimes it seems that as fast as we bail water out of the boat through law enforcement and rehabilitation, it runs right back in through the holes in our judicial system. I intend to plug those holes. Until then, all the money we spend, all the enforcement we provide, and all the rehabilitation services we offer are not going to solve the drug problem in America.

Finally, I want to emphasize my continued opposition to legalizing the possession, sale or use of marijuana. There is no question about whether marijuana is dangerous, the only question is how dangerous. While the matter is still in dispute, the only responsible governmental approach is to prevent marijuana from being legalized. I intend, as I have said before, to do just that.

Conclusion

This Nation has fought hard and sacrificed greatly to achieve a lasting peace in the world. Peace in the world, however, must be accompanied by peace in our own land. Of what ultimate value is it to end the threat to our national safety in the world if our citizens face a constant threat to their personal safety in our own streets?

The American people are a law-abiding people. They have faith in the law. It is now time for Government to justify that faith by insuring that the law works, that our system of criminal justice works, and that "domestic tranquility" is preserved.

I believe we have gone a long way toward erasing the apprehensions of the last decade. But we must go further if we are to achieve that peace at home which will truly complement peace abroad.

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In the coming months I will propose legislation aimed at curbing the manufacture and sale of cheap handguns commonly known as "Saturday night specials," I will propose reforms of the Federal criminal system to provide speedier and more rational criminal trial procedures, and I will continue to press for innovation and improvement in our correctional systems.

The Federal Government cannot do everything. Indeed, it is prohibited from doing everything. But it can do a great deal. The crime legislation I will submit to the Congress can give us the tools we need to do all that we can do. This is sound, responsible legislation. I am confident that the approval of the American people for measures of the sort that I have suggested will be reflected in the actions of the Congress.

RICHARD NIXON.

THE WHITE HOUSE, *March 14, 1973.*

[From the Congressional Record, Mar. 27, 1973]

By Mr. Hruska (for himself and Mr. McClellan):

S. 1400. A bill to reform, revise, and codify the substantive criminal law of the United States; to make conforming amendments to title 18 and other titles of the United States Code; and for other purposes. Referred to the Committee on the Judiciary.

THE CRIMINAL CODE REFORM ACT OF 1973

Mr. HRUSKA. Mr. President, I take great pleasure in introducing on behalf of myself and the distinguished senior Senator from Arkansas (Mr. McClellan) S. 1400, the Criminal Code Reform Act of 1973.

In 1966, the Congress created the National Commission on Reform of Federal Criminal Laws and charged it with these statutory duties:

"SEC. 3. The Commission shall make a full and complete review and study of the statutory and case law of the United States which constitutes the Federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the Federal system of criminal justice. It shall be the further duty of the Commission to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the end of justice." (Pub. L. 89-801).

Along with my cosponsor, the chairman of the Subcommittee on Criminal Laws and Procedures, and the Senator from North Carolina (Senator Ervin) I was privileged to serve on the Commission.

On January 7, 1971, the Commission submitted to the President and the Congress its final report, which contained a series of recommendations designed to serve as a work basis for congressional consideration of the need for reform with a view toward further refinement of our federal system of criminal justice.

At that time President Nixon made the following statement:

Statement by the President After Receipt of the Report of the National Commission on Reform of Federal Criminal Laws, January 16, 1971

"Over two centuries the Federal criminal law of the United States has evolved in a manner both sporadic and haphazard. Needs have been met as they have arisen. Ad hoc solutions have been utilized. Many areas of criminal law have been left to development by the courts on a case-by-case basis—a less than satisfactory means of developing broad governing legal principles.

"Not unexpectedly with such a process, gaps and loopholes in the structure of Federal law have appeared; worthwhile statutes have been found on the books side by side with the unusable and the obsolete. Complex, confusing and even conflicting laws and procedures have all too often resulted in rendering justice neither to society nor to the accused.

"Laws that are not clear, procedures that are not understood, undermine the very system of justice of which they are the foundations.

"In 1966, Congress undertook to provide the United States with a modern, comprehensive, and workable Federal code. The first major step in that effort was an act of Congress creating the Commission on Reform of the Federal Criminal Law—and its principal author was Congressman Richard H. Poff of Virginia.

"Composed of distinguished legislators, judges, attorneys—all of demonstrated competence in the field of Federal criminal law—the Commission was mandated to review exhaustively the Federal criminal code—and to make recommendations for both procedural and substantive reform.

"The Commission has fulfilled its mandate, and I was pleased to receive its report. My personal appreciation goes to the members of the commission, the advisory committee, and the staff—and especially to the Commission Chairman, the Honorable Edmund G. Brown, the Vice Chairman, Congressman Poff, and the chairman of the Advisory Committee, Justice Tom Clark.

"Even a brief examination of the report indicates the enormous investment of time and thought it represents, and the value of this vast work of 4 years. Because of its scope, and its various approaches to controversial problems, it

would be premature at this time for me to render judgment on the substance of the recommendations.

"What is apparent, however, is that the 92d Congress has been given what the 89th Congress had requested—a broad comprehensive framework in which to decide the issues involved in reform of the Federal criminal code.

"I have directed the Attorney General to create and staff a team of experienced Justice Department attorneys to undertake their own evaluation of the Commission's many suggestions and further to make the results of their evaluation available to the appropriate committees of the Congress. Further, I have directed the Department to work with the Congress in the same close and cooperative spirit that marked the evolution and passage of the District of Columbia Court Reform and Criminal Procedure Act of 1970.

"Certainly, the need for clarification and modernization of Federal criminal law is as great as was the need for reform of the criminal law and procedures of the District of Columbia. Just as in the later, so in the former, procedural reform must go hand-in-glove with substantive reform—as the Chief Justice recommended himself in the State of the Judiciary message.

"Further, if the same spirit of bipartisan cooperation prevails in this new endeavor, as it did in the last, our success is assured."

In accordance with the President's statement, the following request was made of the former Attorney General John Mitchell:

The President's Memorandum to the Attorney General Directing Action, January 16, 1971

"The Federal Criminal Code reflects our national growth. It has continuously been amended to meet new problems. However, this evolution has resulted in conflicting and overlapping criminal statutes. The entire Code is in dire need of comprehensive reform.

"I have recently received the Report of the National Commission on Reform of Federal Criminal Laws, which was created in 1966 to make a thorough and complete review of the statutory and case laws constituting the Federal system of Criminal Justice. The Report provides a useful framework for considering the issues involved in reform of the Federal penal law.

"Because reform of the Federal Criminal Code should be among the highest of priorities of your Department, I am requesting you to take the following actions:

"1. Establish a team of experienced attorneys within the Department of Justice to work full-time on a comprehensive reform of the Federal Criminal Code, and make sufficient deployment to that team of other personnel with specialized expertise.

"2. Prepare a thorough evaluation of the Commission's Report.

"3. Make an independent examination of the present Federal Criminal Code and recommendations for its comprehensive reform.

"4. Carefully examine the recent address on the State of the Judiciary by the Chief Justice of the United States, and consider procedural as well as substantive areas of reform.

"5. After the foregoing through analysis, prepare and submit appropriate legislation encompassing comprehensive reform of our Federal Criminal laws.

"6. Work closely with appropriate Congressional committees and their staffs throughout your evaluation and recommendation process.

"I would like to receive in six months a summary of your progress and your views concerning appropriate future action."

In February of 1971, the Subcommittee on Criminal Laws and Procedures, under the chairmanship of Senator McClellan, began an ambitious set of hearings and studies on the recommendations of the Commission. These hearings continued over the course of the 92d Congress and culminated in the introduction of S. 1, the massive "Criminal Justice Codification Revision and Reform Act of 1973" on January 4 of this year. Along with Senator Ervin, I was pleased to join Senator McClellan in cosponsoring S. 1.

Over the course of the last 2 years, the Criminal Code Unit within the Department of Justice has labored diligently along with representatives of other interested Federal agencies, in the effort to create the Criminal Code Reform Act.

In his sixth state of the Union message on crime on March 14, 1973, the

President announced his imminent submission to Congress of legislation to revise, reform, and codify existing Federal criminal laws. The bill which I introduce today and S. 1 will thus provide the two major legislative items upon which the Senate will focus in coming months as it proceeds to move in the direction of creating a new Federal Criminal Code.

S. 1 represents the diligent and unsparing efforts of Senator McClellan and others too numerous to mention. Similarly, the bill which I introduce today is the product of extensive and intensive effort by the administration. As is to be expected, however, there are a number of differences between S. 1 and S. 1400—some minor, others more substantial—but even a cursory comparison between them demonstrates their essential similarity of conception and execution.

Despite the differences between S. 1 and the subject bill, it must be emphasized that neither is partisan in nature. The revision, reform and codification of the Federal criminal law is universally conceded to be imperative. For too long now our efforts to protect life and property, human rights and domestic tranquility have been hobbled by the most fundamental element of the criminal justice system, the law itself.

While numerous individual criminal statutes, particularly some of the more recent ones, have been of great value, a great number have been of little or no use, and as a body of law existing provisions have been deficient. S. 1400 faces this problem squarely by suggesting a rational, integrated code which is both workable and responsive to the demands of our highly complex 20th-century society.

The bill is structured as an amendment to title 18 of the United States Code—Crimes and Criminal Procedure: Title I consists of a thorough revision of substantive Federal criminal law and its codification into an integrated Federal Criminal Code; title II provides necessary conforming amendments to the entire United States Code. The new Federal Criminal Code proposed by title I of the bill is divided into three parts: the first part deals with general provisions and principles, the second with definitions of Federal offenses, the third with provisions for sentencing.

PART I: GENERAL PROVISIONS AND PRINCIPLES

Part I of title I, setting forth general provisions and principles with respect to such matters as Federal criminal jurisdiction, culpability, complicity, and defenses, contains a number of significant innovations. Foremost among these is a new approach to the treatment of Federal criminal jurisdiction—treating as a Federal offense the basic criminal misconduct which occurs under circumstances giving rise to Federal jurisdiction rather than regarding the offense in terms of an affront to some Federal jurisdiction factor such as the mails.

Among the numerous advantages to this approach are clarity of drafting, uniformity of interpretation, and consolidation of numerous existing offenses consisting of basically the same type of conduct. For example, approximately 70 theft offenses under current law—each written in a different fashion to cover the taking of various kinds of property in different jurisdictional situations—have been replaced by 5 general sections. Almost 80 forgery, counterfeiting, and related offenses have been replaced by 3 sections. About 50 statutes involving perjury and false statements have been consolidated into 4 sections. Approximately 70 arson and property destruction offenses have been reduced to 4.

Similar advantages result from the bill's treatment of culpability, the mental element of an offense. Instead of 79 undefined different terms, or combinations of terms, presently found in title 18, the bill uses 4 defined terms—intentionally, knowingly, recklessly, and negligently—to describe the state of mind.

Another major innovation reflected in part I is the codification, for the first time in Federal criminal law, of general defenses to prosecution. Not only does codification of defenses comport with the bill's overall goal of setting forth in one place all major aspects of substantive Federal criminal law, it permits clarification of areas in which the law is confused, supplies uniform Federal standards in the area for the first time, and would provide congressional support for the better-reasoned judicial interpretations under existing law.

Probably the most significant feature of the bill's chapter on defenses is its

treatment of the "insanity" defense. Under section 502, a mental disease or defect will not absolve a person of guilt unless it deprives him of the intent or knowledge required for commission of the offense charged. The purpose of this formulation, which has considerable support in psychiatric and legal circles, is to shift the inquiry from "was he able to control his conduct?" to "did he know what he was doing and if so, does he require treatment or does he deserve imprisonment?" This innovative approach to the problem of the relationship between mental illness and crime could go far to assure better protection for society while at the same time providing meaningful dispositions for the mentally diseased.

PART II: OFFENSES

Part II of title I defines in one place, for the first time since 1790, all Federal felonies, as well as certain related Federal offenses of a less serious character. As is true of part I, part II encompasses a variety of essential reforms. Offenses and, in appropriate instances, specific defenses, are defined in simple, concise and straightforward terms.

Those provisions of existing law which have been found to be obsolete or unusable have been eliminated—for example, 18 U.S.C. 1651—operating a pirate ship on behalf of a "foreign prince"; 18 U.S.C. 45—detaining a U.S. carrier pigeon; 18 U.S.C. 2198—seducing a female steamship passenger—loopholes in existing law have been closed—for example section 1731—theft of union welfare funds—and new offenses have been created where necessary—for example, section 1862—leading organized crime. Of course, where existing law has proved satisfactory and where existing statutory language has received favorable case law interpretation, the law and the operative language have been retained.

Reforms are also suggested with respect to penalties: anomalies have been obviated and penal sanctions have been provided which appropriately reflect the seriousness of the offense by contemporary standards. In some instances, higher potential penalties result—for example, the penalty for arson has been raised from 5 to 15 years in prison—in others the potential penalties have been reduced—for example, impersonation of a foreign official carries a 3 rather than a 10-year prison term. Thus, the effect of the bill's penalty provisions is to reflect current judgments as to the seriousness of different offenses. This is particularly true with respect to the death penalty, which would be provided only for particularly heinous criminal conduct such as wartime treason, sabotage or espionage and murder in certain types of situations—section 2401.

As with the definitions of an offense, the circumstances giving rise to Federal jurisdiction over an offense—the jurisdictional bases—are spelled out in simple, concise language. Far more important, however, is the bill's discriminating approach to Federal jurisdiction. It emphatically rejects the notion of drastic encroachment on areas of State sovereignty, whether by proliferating the number of jurisdictional bases or by radically expanding their applicability. Indeed, jurisdiction has been contracted in areas in which the States have demonstrated little need for assistance in effectively protecting their citizens.

Although the bill reflects a modest extension of Federal jurisdiction, extreme care has been taken to limit expansion to areas of compelling Federal interest which are not adequately dealt with under present law. For example, under present law traveling in interstate commerce to bribe a witness in a State court proceedings is a Federal crime—19 United States Code 1952—but traveling in interstate commerce to threaten or intimidate the witness is not, even if the intimidation takes the form of murder. Obviously, the Federal interest—assisting the State in safeguarding the integrity of its judicial processes—is the same in each case. This being so, an extension of Federal jurisdiction is plainly warranted.

It is anomalous situations of this kind which have prompted the moderate expansion of Federal jurisdiction reflected in the Code. And, of course, the existence of Federal jurisdiction does not require that it be exercised blindly. As they have in the past, Federal prosecutors, under guidelines issued by the Department of Justice, can be expected to continue to exercise discretion by deferring to local authorities in cases primarily of State concern. The bill encourages the sound exercise of prosecutorial discretion in this area by requiring the filing of annual reports by the Department to bring to the attention of Congress the number of cases brought under each of the various jurisdictional bases—section 211.

PART III : SENTENCING

The reforms wrought by parts I and II of title I would have little practical significance if they were unaccompanied by a realistic approach to the myriad problems which arise once a person has been convicted of a Federal offense. Existing law in title 18 alone, provides for 18 different terms of imprisonment and 14 different fines, often with no discernible relationship, between the possible term of imprisonment and the size of the fine. Part III of the bill, therefore, replaces existing anomalies with a rational system whereby offenses are classified for purposes of imprisonment and fines into eight categories.

The bill provides for imposition in appropriate cases of a "notice sanction" requiring a corporate or individual defrauder to give notice of the conviction to those innocent victims who may be entitled to file civil claims for damages—section 2004; and includes mandatory minimum prison terms for persons using dangerous weapons in the course of a crime—section 1821—and organized crime leaders—section 1862.

To reduce the possibility of unwarranted disparities in sentencing, the bill sets forth criteria for the imposition of sentence—including, in section 2401, detailed criteria for imposition of the death penalty. Another significant change which is suggested in this area is the inclusion of a parole component in all prison sentences to insure that control will be maintained over hardened criminals after their release from confinement.

As even this limited review of the bill's more significant features makes clear, its potential for enhancing our Federal law is enormous.

This bill can be regarded as a truly momentous advance toward fulfillment of one of the most basic demands of our society, justice in the administration of the criminal law, for justice in the administration of the criminal law inevitably rests upon the justice of the criminal law.

Mr. President, when S. 1 was introduced, Senator McClellan and I both indicated that we were not prepared to provide a blanket endorsement of its provisions. That will was viewed only as a preliminary work product. It is a starting point. A base upon which to build. Each provision will be given deep study and serious consideration. Some will be adopted, some modified, and some rejected during the processing of the bill. The senior Senator from Arkansas has authorized me to say that his attitude and approach to the instant bill will be the same as they will be with respect to S. 1. So will mine.

The bill which I introduce today is recognized as a monumental effort by the administration, including the Department of Justice and other participating departments and agencies. Particular accolades should go to former Attorney General Mitchell, Attorney General Kleindienst, Assistant Attorney General Henry Petersen and Mr. Ronald L. Gainer who led the Code Unit in the Criminal Division of the Department.

There is much room for debate on this bill and S. 1. I myself will likely have reservations with respect to certain provisions of S. 1400. For example, there is no provision in it for the appellate review of criminal sentences as embraced by the final report of the national commission. Moreover, this concept is not even reorganized to the extended current law with respect to dangerous special offenders as contained in title 18 United States Code, section 3576, added by Public Law 91-452, the Organized Crime Control Act of 1970.

The lack of authority and machinery to review unreasonable sentences has troubled this Senator for many years. Hopefully, the bill that eventually emerges from Congress to supplant the current Federal criminal law will contain some provision in this regard along the lines of S. 716 which I introduced on February 1 of this year with the cosponsorship of Senator McClellan.

Senator McClellan and I firmly believe that the project of rewriting title 18 must be approached with a healthy spirit of compromise. The bill that we will eventually bring forward will have provisions to which we may object or about which we may not be enthusiastic, and that may be true as to each member of the subcommittee and the full Judiciary Committee. But if we are to bring about this reform, again I say that there has to be some give and take. We will have to make up our minds that we are not going to vote against the whole program just because it contains one provision of law or one feature of a bill that we do not like.

S. 1400 and S. 1 offer Congress its first opportunity in nearly 200 years to restructure Federal criminal law so as to better serve the ends of justice in

the broadest sense—justice to the individual and justice to society as a whole. While it would be unrealistic to assume that every facet of S. 1400 or S. 1 will be viewed with equal favor by all observers, I do not think it too much to hope that the task of translating the proposals they embody into reality will be approached with quiet reason and in a spirit of true bipartisanship. The monumental importance of the undertaking demands no less.

I ask unanimous consent that the following exhibits be printed in the Record at the conclusion of my remarks:

First. Excerpts from the President's sixth message to Congress on the State of the Union;

Second. Letter from the Attorney General transmitting the Criminal Code Reform Act of 1973;

Third. An analysis of the subject bill; and

Fourth. A series of comparison tables.

There being no objection, the exhibits were ordered to be printed in the Record, as follows:

EXHIBIT No. 1

THE WHITE HOUSE.

To the Congress of the United States:

This sixth message to the Congress on the State of the Union, concerns our Federal system of criminal justice. It discusses both the progress we have made in improving that system and the additional steps we must take to consolidate our accomplishments and to further our efforts to achieve a safe, just, and law-abiding society.

In the period from 1960 to 1966 serious crime in the United States increased by 122 percent according to the FBI's Uniform Crime Index. The rate of increase accelerated each year until it reached a peak of 17 percent in 1968.

In 1968 one major public opinion poll showed that Americans considered lawlessness to be the top domestic problem facing the Nation. Another poll showed that four out of five Americans believed that "Law and order has broken down in this country." There was a very real fear that crime and violence were becoming a threat to the stability of our society.

The decade of the 1960s was characterized in many quarters by a growing sense of permissiveness in America—as well intentioned as it was poorly reasoned—in which many people were reluctant to take the steps necessary to control crime. It is no coincidence that within a few years time, America experienced a crime wave that threatened to become uncontrollable.

This Administration came to office in 1969 with the conviction that the integrity of our free institutions demanded stronger and firmer crime control. I promised that the wave of crime would not be the wave of the future. An all-out attack was mounted against crime in the United States—

The manpower of Federal enforcement and prosecution agencies was increased.

New legislation was proposed and passed by the Congress to put teeth into Federal enforcement efforts against organized crime, drug trafficking, and crime in the District of Columbia.

Federal financial aid to State and local criminal justice systems—a forerunner of revenue sharing—was greatly expanded through Administration budgeting and Congressional appropriations, reaching a total of \$1.5 billion in the three fiscal years from 1970 through 1972.

These steps marked a clear departure from the philosophy which had come to dominate Federal crime fighting efforts, and which had brought America to record-breaking levels of lawlessness. Slowly, we began to bring America back. The effort has been long, slow, and difficult. In spite of the difficulties, we have made dramatic progress.

In the last four years the Department of Justice has obtained convictions against more than 2500 organized crime figures, including a number of bosses and under-bosses in major cities across the country. The pressure on the underworld is building constantly.

Today, the capital of the United States no longer bears the stigma of also being the Nation's crime capital. As a result of decisive reforms in the criminal justice system the serious crime rate has been cut in half in Washington, D.C. From a peak rate of more than 200 serious crimes per day reached during one month in 1969, the figure has been cut by more than half to 93 per

day for the latest month of record in 1973. Felony prosecutions have increased from 2100 to 3800, and the time between arrest and trial for felonies has fallen from ten months to less than two.

Because of the combined efforts of Federal, State, and local agencies, the wave of serious crime in the United States is being brought under control. Latest figures from the FBI's Uniform Crime Index show that serious crime is increasing at the rate of only one percent a year—the lowest recorded rate since 1960. A majority of cities with over 100,000 population shows an actual reduction in crime.

These statistics and these indices suggest that our anti-crime program is on the right track. They suggest that we are taking the right measures. They prove that the only way to attack crime in America is the way crime attacks our people—without pity. Our program is based on this philosophy, and it is working.

Now we intend to maintain the momentum we have developed by taking additional steps to further improve law enforcement and to further protect the people of the United States.

* * * * *

THE CRIMINAL CODE REFORM ACT

The Federal criminal laws of the United States date back to 1790 and are based on statutes then pertinent to effective law enforcement. With the passage of new criminal laws, with the unfolding of new court decisions interpreting those laws, and with the development and growth of our Nation, many of the concepts still reflected in our criminal laws have become inadequate, clumsy, or outmoded.

In 1966, the Congress established the National Commission on Reform of the Federal Criminal Laws to analyze and evaluate the criminal Code. The Commission's final report of January 7, 1971, has been studied and further refined by the Department of Justice, working with the Congress. In some areas this Administration has substantial disagreements with the Commission's recommendations. But we agree fully with the almost universal recognition that modification of the Code is not merely desirable but absolutely imperative.

Accordingly, I will soon submit to the Congress the Criminal Code Reform Act aimed at a comprehensive revision of existing Federal criminal laws. This act will provide a rational, integrated code of Federal criminal law that is workable and responsive to the demands of a modern Nation.

The act is divided into three parts—

1. General provisions and principals;
2. Definitions of Federal offenses; and
3. Provisions for sentencing.

Part 1 of the Code establishes general provisions and principles regarding such matters as Federal criminal jurisdiction, culpability, complicity, and legal defenses, and contains a number of significant innovations. Foremost among these is a more effective test for establishing Federal criminal jurisdiction. Those circumstances giving rise to Federal jurisdiction are clearly delineated in the proposed new Code and the extent of jurisdiction is clearly defined.

I am emphatically opposed to encroachment by Federal authorities on State sovereignty, by unnecessarily increasing the areas over which the Federal Government asserts jurisdiction. To the contrary, jurisdiction, has been relinquished in those areas where the States have demonstrated no genuine need for assistance in protecting their citizens.

In those instances where jurisdiction is expanded, care has been taken to limit that expansion to areas of compelling Federal interest which are not adequately dealt with under present law. An example of such an instance would be the present law which states that it is a Federal crime to travel in interstate commerce to bribe a witness in a State court proceeding, but it is not a crime to travel in interstate commerce to threaten or intimidate the same witness, though intimidation might even take the form of murdering the witness.

The Federal interest is the same in each case—to assist the State in safeguarding the integrity of its judicial processes. In such a case, an extension of Federal jurisdiction is clearly warranted and is provided for under my proposal.

The rationalization of jurisdictional bases permits greater clarity of

drafting, uniformity of interpretation, and the consolidation of numerous statutes presently applying to basically the same conduct.

For example, title 18 of the criminal Code as presently drawn, lists some 70 theft offenses—each written in a different fashion to cover the taking of various kinds of property in different jurisdictional situations. In the proposed new Code, these have been reduced to 5 general sections. Almost 80 forgery, counterfeiting, and related offenses have been replaced by only 3 sections. Over 50 statutes involving perjury and false statements have been reduced to 7 sections. Approximately 70 arson and property destruction offenses have been consolidated into 4 offenses.

Similar changes have been made in the Code's treatment of culpability. Instead of 79 undefined terms or combinations of terms presently found in title 18, the Code uses four clearly defined terms.

Another major innovation reflected in Part One is a codification of general defenses available to a defendant. This change permits clarification of areas in which the law is presently confused and, for the first time, provides uniform Federal standards for defense.

The most significant feature of this chapter is a codification of the "insanity" defense. At present the test is determined by the courts and varies across the country. The standard has become so vague in some instances that it has led to unconscionable abuse by defendants.

My proposed new formulation would provide an insanity defense only if the defendant did not know what he was doing. Under this formulation, which has considerable support in psychiatric and legal circles, the only question considered germane in a murder case, for example, would be whether the defendant knew whether he was pulling the trigger of a gun. Questions such as the existence of a mental disease or defect and whether the defendant requires treatment or deserves imprisonment would be reserved for consideration at the time of sentencing.

Part Two of the Code consolidates the definitions of all Federal felonies, as well as certain related Federal offenses of a less serious character. Offenses and, in appropriate instances, specific defenses, are defined in simple, concise terms, and those existing provisions found to be obsolete or unusable have been eliminated—for example, operating a pirate ship on behalf of a "foreign prince," or detaining a United States carrier pigeon. Loopholes in existing law have been closed—for example, statutes concerning the theft of union funds, and new offenses have been created where necessary, as in the case of leaders of organized crime.

We have not indulged in changes merely for the sake of changes. Where existing law has proved satisfactory and where existing statutory language has received favorable interpretation by the courts, the law and the operative language have been retained. In other areas, such as pornography, there has been a thorough revision to reassert the Federal interest in protecting our citizens.

The reforms set forth in Parts One and Two of the Code would be of little practical consequence without a more realistic approach to those problems which arise in the post-conviction phase of dealing with Federal offenses.

For example, the penalty structure prescribed in the present criminal Code is riddled with inconsistencies and inadequacies. Title 18 alone provide 18 different terms of imprisonment and 14 different fines, often with no discernible relationship between the possible term of imprisonment and the possible levying of a fine.

Part Three of the new Code classifies offenses into 8 categories for purposes of assessing and levying imprisonment and fines. It brings the present structure into line with current judgments as to the seriousness of various offenses and with the best opinion of penologists as the efficacy of specific penalties. In some instances, more stringent sanctions are provided. For example, sentences for arson are increased from 5 to 15 years. In other cases penalties are reduced. For example, impersonating a foreign official carries a three year sentence as opposed to the 10 year term originally prescribed.

To reduce the possibility of unwarranted disparities in sentencing, the Code establishes criteria for the imposition of sentence. At the same time, it provides for parole supervision after all prison sentences, so that even hardened criminals who serve their full prison terms will receive supervision following their release.

There are certain crimes reflecting such a degree of hostility to society that a decent regard for the common welfare requires that a defendant convicted of those crimes be removed from free society. For this reason my proposed new Code provides mandatory minimum prison terms for trafficking in hard narcotics; it provides mandatory minimum prison terms for persons using dangerous weapons in the execution of a crime; and it provides mandatory minimum prison sentences for those convicted as leaders of organized crime.

The magnitude of the proposed revision of the Federal criminal Code will require careful detailed consideration by the Congress. I have no doubt this will be time-consuming.

* * * * *

CONCLUSION

This Nation has fought hard and sacrificed greatly to achieve a lasting peace in the world. Peace in the world, however, must be accompanied by peace in our own land. Of what ultimate value is it to end the threat to our national safety in the world if our citizens face a constant threat to their personal safety in our own streets.

The American people are a law-abiding people. They have faith in the law. It is now time for Government to justify that faith by insuring that the law works, that our system of criminal justice works, and that 'domestic tranquility' is preserved.

I believe we have gone a long way toward erasing the apprehensions of the last decade. But we must go further if we are to achieve that peace at home which will truly complement peace abroad.

The Federal Government cannot do everything. Indeed, it is prohibited from doing everything. But it can do a great deal. The crime legislation I will submit to the Congress can give us the tools we need to do all that we can do. This is sound, responsible legislation. I am confident that the approval of the American people for measures of the sort that I have suggested will be reflected in the actions of the Congress.

RICHARD NIXON.

THE WHITE HOUSE, *March 14, 1973.*

EXHIBIT 2

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: In his State of the Union message on crime on Wednesday, March 14, 1973, President Nixon stated that he soon would be transmitting to the Congress a bill to reform, revise, and codify the substantive criminal law of the United States. Attached for your consideration and appropriate reference is the proposal to which the President referred—the Criminal Code Reform Act of 1973

The proposed Criminal Code Reform Act had its genesis in Public Law 89-801, by which the Congress created the National Commission on Reform of Federal Criminal Laws to review the existing criminal code and to make recommendations for its reform. On January 7, 1971, the Commission submitted its report to the President and the Congress "as a work basis upon which the Congress may undertake the necessary reform of the substantive criminal laws." Upon receipt of the report, the President acknowledged the valuable contribution of the Commission and directed that the Department of Justice establish a team of experienced attorneys to "prepare a thorough evaluation of the . . . Report [of the Commission,] make an independent examination of the present Federal Criminal Code and recommendations for its comprehensive reform . . . [and,] after the foregoing thorough analysis, prepare and submit appropriate legislation encompassing comprehensive reform of our Federal criminal laws". For two years the Department of Justice has been engaged in the task assigned by the President. The attached Criminal Code Reform Act is the product of that effort.

The need for reform and codification of the federal criminal law is universally conceded. For too long now our efforts to protect life and property, human rights and domestic tranquility have been hobbled by the most fundamental element of the criminal justice system, the law itself. While numerous individual criminal statutes, particularly some of the more recent ones, have been of great value, an even greater number have been of little or no use, and as a body of law the existing provisions have been sadly deficient. The Criminal Code Reform Act faces this problem squarely and meets it fairly, by providing a rational, integrated code which is both workable and responsive to the demands of our twentieth century society.

Although the Code contains approaches and proposals suggested by numerous sources, its principal indebtedness is to the "work basis" supplied by the Commission and to those elements of the current statutory and case law that have proved particularly effective.

Title I of the draft bill contains the revision of the substantive federal criminal law. It consists of an amendment of existing Part I of title 18, United States Code, which replaces that Part with three parts relating, first, to general provisions and principles of criminal law; second, to a description of federal offenses; and third, to sentencing for offenses against federal law.

Part I of the proposed Code sets forth general provisions and principles with respect to such matters as federal criminal jurisdiction, culpability, and complicity, and codifies, for the first time in federal criminal law, general defenses to prosecution.

The matter of the most fundamental importance in Part I is the approach to the treatment of federal criminal jurisdiction—treating as a federal offense the basic criminal misconduct which occurs under circumstances giving rise to federal jurisdiction rather than regarding the offense in terms of an affront to some federal jurisdictional factor. Among the numerous advantages to this approach are clarity of drafting, uniformity of interpretation, and consolidation of numerous existing offenses consisting of basically the same type of conduct. While the basis of this approach had been recommended by the Commission, the variation adopted by the Department of Justice achieves the advantages of the approach without fostering a material expansion of the reach of federal criminal jurisdiction. This has been accomplished by including in each section describing an offense a separate subsection which concisely spells out the specific circumstances giving rise to federal jurisdiction, and which tailors those circumstances to the scope of current law unless there is good reason to vary from it. The proposed Code, therefore, rejects any expansion of federal jurisdiction which would cause a material encroachment on areas of state sovereignty, whether by proliferating the number of jurisdictional bases or by significantly expanding their applicability.

Part II of the proposed Code defines in one place, for the first time since 1790, all federal felonies, as well as certain related federal offenses of a less serious nature. Offenses and, in appropriate instances, specific defenses, are defined in simple, concise, and straightforward terms. Those provisions of existing law which have been found to be obsolete or unusable have been eliminated duplicative or overlapping provisions have been consolidated and gaps have been closed. Where existing statutory provisions particularly the more recent enactments have proved satisfactory and where existing statutory language has received valuable case law interpretation, the law and the operative language have been retained.

Part III of the proposed Code replaces the existing hodgepodge of sentences and fines with a rational system whereby offenses are classified for purposes of imprisonment and fines into nine categories (These categories are made applicable to offenses described outside Title 18 as well as those described within the Title.) For the most part these penalty levels generally reflect the terms of imprisonment determined by the Congress to be warranted by the current counterparts of the specific offenses listed in the Code although mandatory minimum prison terms have been included for persons using dangerous weapons in the course of a crime, traffickers in hard narcotics, and organized crime leaders, and a parole component has been included in all prison sentences to insure that "street-time" supervision will be available for all offenders and not just those found to deserve early release on parole. The fine levels, however, have been substantially increased in order that they may be felt not just by defendants without major financial resources but by those defendants,

corporate and individual, who for too long have tended to view criminal fines as an insignificant potential addition to the cost of doing business. Moreover, Part III provides for the imposition in appropriate cases of a "notice sanction" requiring a corporate or individual defrauder to give notice of the conviction to those innocent victims who may be entitled to file civil claims for damages. The death penalty provisions of the proposed Code have been carefully drafted to meet the concerns expressed by the justices of the Supreme Court, the penalty is made available only for particular crimes—treason, sabotage, espionage and murder—and then only under certain very limited circumstances.

Title II of the draft bill primarily contains conforming amendments, including amendments designed to retain but relocate those provisions concerning misdemeanors which are appropriately located outside Title 18 because of their relationship to a certain government agency or program and amendments to conform references to existing sections of Title 18 to the new section numbers. There are a few substantive changes made by Title II. The provisions relating to parole, the sanity of the defendant, and juvenile delinquency have been substantially amended in accord with the amendments to Title 18 made by Title I of the draft bill and a new statute of limitations provision has been included to provide a single provision for all federal offenses. A few other provisions have been modified or repealed consistent with the sentencing provisions in proposed Part III of Title 18. Other technical, conforming amendments to certain provisions outside Title 18 which remain to be made will be prepared and submitted for later consideration.

Title III of the draft bill contains the severability and effective date provisions.

Congress is now presented with its first opportunity in nearly 200 years to simplify and restructure the federal criminal law so as to serve more effectively the ends of justice in its broadest sense—justice to the individual and justice to society as a whole. While every facet of the proposed Code may not be viewed with equal favor by all observers, we do not think it too much to hope that the task of translating the proposals it embodies into reality will be approached with quiet reason and in a spirit of true bipartisanship. The monumental importance of the undertaking demands no less.

We look forward to working with the Congress in its consideration of this legislation and we will welcome the opportunity to provide testimony and documentary explanations of the reasons underlying specific aspects of the Code.

The Office of Management and Budget has advised the Department that enactment of this proposal would be in accord with the Program of the President.

Sincerely,

Attorney General.

EXHIBIT 3

OUTLINE OF SOME OF THE MOST SIGNIFICANT PROVISIONS OF S. 1400

Chapter 1

§ 102. Four purposes of sentencing are listed: assurance of just punishment, deterrence, incapacitation and rehabilitation.

§ 103. The common law rule requiring strict construction of penal statutes is applicable to the code only to the extent necessary to assure fair notice of what constitutes an offense. Any other historical aspects of the rule are expressly made inapplicable, as they are under current case law. Such an express abrogation of the other historical aspects of the rule is included in several modern state codes.

§ 104. This section assures that any civil remedy available to a victim of an offense will in no way be abrogated by any provision of the code.

§ 105. Applicable sentences for offenses are separated into nine penalty levels, instead of permitting an infinite range of penalties.

§ 111. A total of seventy-nine terms commonly used throughout the code are catalogued and specifically defined. In current law, many of these terms are undefined and others are separately defined with conflicting meanings. Standard definitions for such frequently used terms as "anything of value", "government" "mail" "public servant", and "United States" is a major improvement over current law.

Chapter 2

Chapter 2 introduces the general treatment of federal jurisdiction in the proposed new criminal code. The essence of the code approach is to impose punishment for the underlying misconduct which is within the federal jurisdiction, rather than to impose punishment for the interference with the jurisdictional factor itself. For example, the essence of section 1621 is kidnapping, rather than, as in the primary provision of current law, the interstate transportation of a victim of a kidnapping. The power of the federal government to prosecute for kidnapping under section 1621, however, is limited by a subsection setting forth the particular circumstances permitting prosecution (among these being the interstate transportation of the victim). This approach has several material advantages, not the least of which are clarity of drafting, uniformity of interpretation, and consolidation of offenses into fewer offenses with several jurisdictional bases. This is the most fundamental innovation proposed by the Brown Commission.

Two collateral jurisdictional proposals were also made by the Brown Commission. First, the Brown Commission recommended consolidating the existing circumstances giving rise to federal jurisdictional bases, one or more of which would apply to each penal section by cross reference. This, by the generality of the language employed would significantly expand federal jurisdiction in numerous offenses.

This approach is rejected in the proposed new criminal code instead, particularized bases, tailored to the penal section in which they appear, have been employed. This approach permits tight control over any jurisdictional expansion or contraction. Second, the Brown Commission proposed that some offenses be subject to federal prosecution if they occur in the course of another offense over which federal jurisdiction exists. While this concept of ancillary ("piggyback") jurisdiction has several advantages, and in fact is employed in substance in several provisions of current law, its broad application as suggested by the Brown Commission would result in a material increase in federal jurisdiction. While the proposed new criminal code adopts the concept of ancillary jurisdiction because of its basic advantages, its use in the proposed code is severely limited—considerably more limited than its use in the Brown Commission proposal or the use of the analogous "compound grading" technique employed in S 1.

§ 202. Proof of more than one circumstance giving rise to federal jurisdiction over an offense does not, in itself, increase the number of offenses committed. Thus, theft of a federal document from the mails on a military post is one offense (theft) with three circumstances giving rise to federal jurisdiction, rather than three offenses (theft of government property, theft from the mails, and theft on a federal enclave).

§ 203. This section defines in one place the territorial maritime and aircraft jurisdiction of the United States. A major addition to the special territorial jurisdiction is jurisdiction over the Indian country. This, together with associated changes, will eliminate the discrimination in current law so that an offense committed by or against an Indian will now carry the same penalty as an offense committed by or against a non-Indian. As under current law, however, federal law does not apply to Indian reservations where a state has exclusive jurisdiction or where tribal law has been applied.

The broad range of the special aircraft jurisdiction incorporates the requirements imposed by treaties.

§ 204. This sets forth in a single provision all instances in which the United States may prosecute for an offense committed outside its ordinary jurisdiction. It contains three innovations. First, in subsection (g) it closes the gaps in jurisdiction where a civilian accompanying the Armed Forces commits an offense for which the host nation will not or cannot prosecute, where a United States diplomat commits an offense and cannot be prosecuted by the foreign nation because of his immunity and where a member of the armed forces commits an offense in a foreign nation and the commission of the offense is not discovered prior to his discharge. Second, in subsection the extraterritorial jurisdiction is extended to cover any offense by or against a U.S. citizen outside the jurisdiction of any nation, thereby permitting prosecution for offense committed in areas not now covered by the law of any nation such as Antarctica or the moon. Third, subsection (i) covers such extraterritorial jurisdiction as is required by treaty to implement United States obligations under various

international conventions. This provision would cover piracy, for example as an aspect of extraterritorial jurisdiction under a treaty through which traditional assault and property taking offenses may be prosecuted rather than as a substantive offense of "Piracy."

§ 211. Annual Reports to the Congress, setting forth for each offense the number of prosecutions commenced during the preceding year and identifying the number prosecuted under each particular circumstance giving rise to federal jurisdiction are required for the purpose of providing the Congress with the information necessary to make reasonable determinations concerning the advisability of expanding or retracting the reach of Federal jurisdiction to particular areas. This means of ascertaining and controlling the exercise of federal jurisdiction by legislative review is substituted for the Brown Commission's hortatory approach. The Brown Commission had called for the declination of prosecution unless there exists a "substantial federal interest" in an offense, such as would be prompted by the involvement of organized crime or the corruption of state law enforcement agencies; the existence or nonexistence of such a "substantial federal interest" would not be litigable.

Chapter 3

§§ 301-302. The mental element of an offense must be described by one of four defined terms denoting particular states of culpability. The current title 18 uses 79 different terms or combination of terms to cover the same ranges of culpability. The simplification should permit far more uniformity of interpretation. The Brown Commission proposal and several modern state codes, in emulation of the Model Penal Code, have employed variations of the same four terms.

§ 303. Subsection (c) provides that culpability is not required for jurisdictional factors. Consequently, it is not a requisite to federal conviction that, for example, a sniper be aware that the police officer he is shooting is a federal police officer, nor that a thief be aware that it is federally-owned property he is stealing. This accords with current case law in most, but not all, areas.

Chapter 4

§ 402. The liability of an organization for the conduct of its agent has been drafted to parallel existing law, rather than to contract the existing law slightly as the Brown Commission inadvertently proposed, or to expand it slightly as others have suggested.

Chapter 5

For the first time in federal law, general defenses to prosecution are codified. However, instead of adopting the Brown Commission approach of detailing all of the ramifications of the various defenses, they are set forth in simple, general terminology designed to permit the courts necessary flexibility. This approach will permit the clarification of areas in which the case law is confused, and will provide Congressional support for the more carefully considered interpretations under existing law, while not presuming to occupy the field.

For the most part the codified defenses reflect present law in the majority of jurisdictions. The major exception is the defense of insanity. The proposed approach reflects rejection of the *McNaughton* rule combined with the "irresistible impulse" rule, that numerous variations of these rules suggested by the ALI and others, and the *Durham* rule with which the District of Columbia had experimented. The proposal would permit insanity to serve as a defense to a criminal prosecution only if the insanity precluded a finding of the existence of the required mental element of the offense. Under this "criminal intent" test, a defendant who suffers from a mental disease or defect, but who nevertheless is capable of acting intentionally or knowingly, would have his insanity considered at pre-sentence stage in connection with a determination of what should be done with him. While this is not yet the law in any American jurisdiction, respectable legal and psychiatric authority has developed in its support and it was recommended by a minority of the Brown Commission.

Chapter 10

§ 1001. There is, under the current law, no attempt statute of general applicability, although a number of individual offenses contain attempt provisions. This section makes it an offense to attempt to commit any Federal crime. The

attempted offense in most instances carries the same penalty as the completed offense on the theory that a defendant who begins to commit an offense should not benefit from a happenstance causing its interruption. Nevertheless, to encourage abandonment of criminal enterprise, a voluntary, complete, and effective avoidance of the offense constitutes an affirmative defense.

§ 1002. The conspiracy provision reflects current law, as developed through judicial interpretations of the present general conspiracy statute.

§ 1003. With the exception of subornation of perjury, there is no solicitation offense in current Federal law. The Brown Commission recommended a general offense covering the solicitation of another to commit any Federal offense. This section severely limits the offenses for which solicitation is itself an offense because of concern that its indiscriminate application might in some areas infringe on First Amendment protections.

Chapter 11

§ 1101. Unlike the Brown Commission approach, treason is cast in the terminology employed in the Constitution, thereby assuring constitutionality and preservation of existing case law. Major rebellion is graded less severely than assistance to foreign enemies.

§ 1102. Domestic rebellion, of lesser scope than that described in 1101, is made a separate offense, carrying a lesser penalty than treason. While possibly giving the appearance of cutting back on the reach of existing law, it does not do so in fact, since it is similar to 18 U.S.C. 2382 and 2384.

§ 1103. This replaces the Smith Act, 18 U.S.C. 2385. It is a simplified version, embodying those elements the Supreme Court held necessary to the validity of the Smith Act and eliminating the superfluous verbiage and the matters held to be invalid.

§§ 1104. This penalizes the use of weapons by a group of persons for the purpose of taking over a government function or a government agency. There is no comparable provision in current law, although the Brown Commission proposed a similar provision. The Brown Commission proposal, which would penalize the use of weapons by a group for "political purposes", is broader than § 1104.

§ 1111. There is added to the traditional means of committing sabotage the knowing supplying of defective materials for national defense purposes.

§ 1121. This section covers the espionage offenses—collecting and communicating military secrets to foreign powers—now found in 18 U.S.C. 793(a) (c) and 794.

"The subject of espionage is defined as 'national defense' information, a term less broad than the Brown Commission's "national security" information. It covers any information relating to the national defense, whether or not classified. The offense requires a specific intent to harm the United States or to benefit a foreign power. Espionage carries the highest penalty if, *inter alia*, it is committed either during wartime or during a specially-declared period of 'national defense emergency.'"

The Brown Commission's proposal to cover espionage on behalf of domestic rebels is rejected; adequate coverage is available under related sections.

§ 1122. Disclosure of national defense information to any person not authorized to receive it is made an offense even though the information is not classified. This covers such information as has not yet been stamped as classified, and such information as is inherently not capable of being classified. The offense is currently covered by 18 U.S.C. 793 (d) and (e).

§ 1123. This offense, derived from 18 U.S.C. 793(f), punishes grossly negligent conduct, on the part of one entrusted with national defense information, who subjects it to compromise.

§ 1124. The offense of disclosing classified information has been broadened both as to leakers, by including former officials and other persons entrusted with classified materials, and as to recipients, by covering disclosure to any unauthorized person, not merely communists or foreign agents as in current law (50 U.S.C. 783 (b)). It is sufficient for conviction that the information was classified; the propriety of the classification is irrelevant. To avoid the possibility of penalizing persons who have no special responsibility for classified information, penalization of the recipient either as an accomplice or as a co-conspirator is expressly precluded.

§ 1125. An unauthorized recipient of classified information himself commits

an offense only if he is a foreign agent. The provision of current law (50 U.S.C. 783(c)) covering communists who are not foreign agents, as well as foreign agents, is dropped.

Chapter 13

§ 1301. Current law contains an offense for conspiracy to defraud the government (18 U.S.C. 371) but not a substantive offense of defrauding the government. This section replaces that portion of the conspiracy statute with a substantive offense. In combination with the theft provision which covers frauds involving the taking of property, and the various other provisions of Chapter 13 which cover specific forms of non-property taking frauds against the United States, this section assures adequate coverage against any scheme to defraud the government.

§ 1313. The penalty for bail jumping parallels the penalty provided for the underlying offense charged in cases of major crimes. This eliminates the incentive to jump bail in the hope of facing a reduced penalty after sufficient time has passed that the government's main case has grown stale through unavailability of witnesses and evidence.

§ 1315. Introducing or possessing contraband items in a federal prison is graded according to the seriousness of the item involved, ranging from high penalties for such things as firearms or heroin to very minor penalties for such things as prohibited food items or cigarettes which are deemed contraband purely for reasons of prison discipline. Under current law, possession or introduction of any prohibited item carries a ten-year felony penalty.

§ 1321. The outright bribery of a witness in an official proceeding to influence his testimony receives separate treatment, as it does in current law. It carries a relatively high penalty, reflecting the seriousness of the offense and its effect on the administration of justice.

§ 1322. Payments that do not amount to outright bribes, but are nonetheless improper payments for or because of a person's testimony or appearance at an official proceeding, are penalized as they are under current law. Problems that have plagued the courts on the issues of who specifically is a witness or when an official proceeding has begun have been resolved.

§ 1323. Current law covers tampering with witnesses and informants by means of force or threats only in a vague obstruction of justice statute. This section spells out the prohibited conduct in detail, but continues a catch-all clause to assure that the coverage of current law is maintained. The provision of current law making it a federal crime to cross a state line or to use an interstate facility for the purpose of bribing a witness in a state case is broadened to cover such conduct for the purpose of threatening or intimidating such a witness.

§ 1324. Current law does not cover crossing a state line or using an interstate facility to retaliate against a witness or an informant in a state proceeding. This section would parallel the bribery jurisdiction in such cases.

§ 1331-1336. These sections deal with criminal contempt and related offenses. Contempt may be punished summarily, as it carries only a six-month prison term. However, if the contemptuous behavior constitutes an offense under another provision of the Code (e.g., failure to appear as a witness), the person could later be prosecuted for such an offense and would face an additional prison term of up to three years. Under current law, there is no limit on the term of imprisonment that may be imposed after a prosecution for criminal contempt.

§ 1342. Current law does not make perjury an offense if the false testimony is not material. This section creates such an offense, carrying a misdemeanor penalty, as a lesser-included form of perjury.

§ 1343. This section consolidates the numerous false statement statutes scattered throughout the United States Code—47 in title 18 alone. The offense, unlike current law, is graded below the penalty for perjury in order to obviate practical difficulties under the current statutes. Oral false statements, as well as written ones, are covered by the section. A limited defense is codified to exempt oral false statements, and written false statements, made to law enforcement officers.

§ 1346. In correspondence with the action of Congress in 1970, the two-witness rule in perjury prosecutions is eliminated, a retraction defense is codified, and a provision is included permitting conviction upon proof of two inconsistent statements without proof of which of the two is false. The ele-

ment of "materiality", which previously has been left to case law, is codified along the lines of existing judicial interpretation.

§ 1351. Although the term "corruptly" is eliminated, this section covers in a simplified fashion the same reach as the current bribery provisions, and maintains the high penalty under current law (fifteen years) for bribing a public servant.

Concurrent federal jurisdiction to prosecute state and local briberies is not extended beyond current law. Where jurisdiction does exist to prosecute for a state bribery, however, it is the federal definition of bribery that will apply, and not the definition that happens to exist under the laws of the particular state in which the offense occurred. This should help simplify federal prosecutions for such state and local briberies.

§ 1352. The current lesser included form of bribery is maintained to cover those situations where no express agreement or understanding can be proved, but where a payment, either before or after the official action in question, is made "for or because of" such action. This provision has proved to be of material value.

§ 1354. Payments to public servants, political party officials and relatives of public servants are made illegal if the payment is made in return for the recipient's exerting influence on a public servant with respect to his official action.

§ 1356. Public servants are prohibited from using their own official actions or information gained because of their position for private gain while they remain public servants or for one year after they leave public service. As a statute of general applicability this offense is new to federal law.

§ 1357. The use of force threat, intimidation, or deception to influence a public servant in the exercise of his official duties is prohibited. However a defense is provided if the threat was of lawful conduct and its purpose was solely to influence the public servant to perform his duties properly.

Chapter 14

§ 1401. Contrary to the Brown Commission proposal, for the purpose of avoiding unnecessarily complex proof problems the tax evasion statute is graded as a seven-year felony irrespective of the size of the tax efficiency.

Chapter 15

§ 1501. The current statute covering conspiracy to deprive a person of his civil rights is modified by writing it as a substantive offense, by eliminating the more antiquated provisions as to the manner in which the offense may be committed (going "in disguise" on a highway or on another's premises), by eliminating the requirement that the victim be a citizen, and by grading the offense as a misdemeanor rather than a 10-year felony. The reduction is a misdemeanor is appropriate in light of nature of the offense, and in light of the fact that an actual assault, maiming, or murder occurring the course of the offense may be separately charged and punished.

§ 1502. This replacement for the current civil rights statute reaching state action covers a law enforcement officer who intentionally commits a crime against a person which deprives that person of his civil rights. It is narrower than existing law in that it covers only acts that are criminal in themselves; it is broader than existing law in that the required intent concerns the criminal act and not the deprivation of civil rights.

§ 1531. Coverage of existing law is expanded to include disclosure of the contents of intercepted mail, thereby paralleling the provisions of the wiretapping statute.

§§ 1532-1533. The current statutory provisions against wiretapping and electronic eavesdropping are maintained. The current provision that prohibits certain advertising of eavesdropping devices is expanded to cover additional forms of advertising.

Chapter 16

§ 1601. The degrees of murder are eliminated as they have been employed historically, only to differentiate between murders to which the death penalty is applicable and those to which it is not; this differentiation is supplied in the proposed new code by section 2401.

The felony-murder doctrine is continued in a modified form. It applies only if the killing occurs in the course of one of the offenses specified. If the killing is of a person other than one of the participants in the offense, and if the kill-

ing in the course of the offense was a reasonably foreseeable possibility from the standpoint of the defendant.

Concurrent federal jurisdiction over homicide (and other offenses in the assault area) is limited to lesser federal public servants who are law enforcement officers, prison employees, or other specifically designated for coverage by the Attorney General, and who are killed because of their official duties. Concurrent federal jurisdiction is also provided, by the ancillary jurisdiction concept, over killings occurring in the course of certain specified felonies, some of which currently carry an increased penalty if death results in the course of the offense and some of which do not. While the Brown Commission draft would permit federal prosecution for a murder occurring in the course of any other federal offense, the proposed code limits the attachment of such ancillary jurisdiction to approximately twenty-five federal offenses in which the availability of an aggravated penalty is most needed.

§§ 1602-1603. In these sections as in the assault series, an increased penalty is provided if the victim of a manslaughter or a negligent homicide is the President or a successor to the presidency.

§ 1611. Unlike the recommendation of the Brown Commission, but like current law, this provision provides an appropriately severe penalty (15 years) where an assault reaches the level of maiming.

§ 1615. This provides for an increased penalty for engaging in any criminal conduct which recklessly endangers the life of another. The provisions, which was suggested by the Brown Commission, provides a convenient way for upgrading offenses, which may or may not in themselves endanger human life when life in fact is endangered (e.g., arson). It also provides a means of increasing the penalty where extremely aggravated forms of regulatory offenses are committed.

§ 1621. Current law punishes kidnapping for ransom "or otherwise". This section spells out the specific instances in which a kidnapping will warrant the highest penalties. The grading section is designed to deter a kidnapper from subjecting his victim to serious bodily injury or death.

§§ 1622-1623. These are lesser-included forms of kidnapping, carrying grading levels proportionate to the offense. Current law applies the same penalty to all forms of kidnapping.

§ 1625. The grading of aircraft hijacking is altered, like kidnapping, to provide the highest penalty where a victim of the offense is killed, the next highest penalty where a victim of the offense is seriously injured, and the third highest penalty where no victim of the offense is injured. This approach is predicated on the theory that the primary responsibility of the government is to deter the offender from taking the lives of innocent victims.

A special aircraft hijacking jurisdiction provision has been provided to implement the responsibility of the United States under the recent Convention for International Cooperation to Combat Aircraft Hijacking.

§ 1631. The offense of rape, and the other sexual offenses in the sections that follow, apply without distinction as to the sex of the offender or of the victim; forcible sodomy is included in the definition of the offense.

No particularized evidentiary requirements, corroboration requirements, or instruction requirements are included, nor is there any defense or grading distinction based upon the promiscuity of the victim.

The fifteen-year penalty is the basic penalty only. To it is added, by the use of the ancillary jurisdiction concept, any penalty for use of a weapon (seven years) serious bodily injury (seven years), maiming (fifteen years), or death (life imprisonment or death).

§ 1632. Subsection (a)(4) provides a general lesser included form of rape which serves to assure that an offender is less apt than under current law to avoid any penalty at all where a jury questions the sufficiency of the victim's resistance.

§ 1633. Consensual sexual activity between peers is excluded from the statutory rape provision. A limited mistake of age defense is provided.

Chapter 17

§§ 1701-1703. The grading of the arson series of offenses, while apparently lower than is customary, is subject to being increased by application of the assault and murder series of offenses where persons are injured or killed and by application of the reckless endangerment offense where, although no one is injured, persons are endangered by the commission of the offense. Vital public

facilities are specifically included for protection against arson, bombing, and other damage.

§ 1711. The modern state code version of burglary is largely adopted with the rejection of the outmoded common law requirement: of a "breaking". The federal interest in covering such premises as bank buildings and post offices is preserved.

§ 1712. The criminal trespass statute is carefully graded so that the penalty matches the degree of protection required by the premises in question and the amount of notice a trespasser has received the highest penalty (Class A misdemeanor) is limited to trespass in highly secured government premises and dwellings.

§ 1721. The robbery offense is cast in traditional terminology, which has a fairly settled meaning instead of the "theft plus assault" terminology suggested by the Brown Commission.

§ 1722. Extortion is included as a separate offense, paralleling the robbery offense, instead of being submerged in the general theft section as suggested by the Brown Commission. This avoids the loss of a favorable body of case law. However, the section is worded to overcome the adverse effects of a recent Supreme Court opinion construing the legislative intent as to one aspect of the existing statute in an unusually restrictive manner.

A jurisdictional provision is added to permit federal prosecution of persons extorting money from an employee of a federally-insured bank, thus filling a major gap in the current law which covers only bank robbery and not bank extortion.

§ 1723. This section creates a lesser form of extortion, permitting a grading distinction not available under current law.

§ 1724. The loansharking provisions passed by Congress in 1968 are here incorporated in revised form. The only material change is the making of an independent offense out of elements constituting only a *prima facie* case under the 1968 legislation. This offense, committed by making a loan of over \$100 at an annual interest rate in excess of 45 percent which is unenforceable under the law of the state in which it is made (and which presumably is intended to be enforced by extra-legal means), carries a seven-year penalty as opposed to fifteen years for the other two forms of loansharking. The plenary federal jurisdiction provided by the 1968 act, which was based upon the commerce power and the bankruptcy power is continued unchanged.

§ 1731. The 70-some theft provisions under current law are consolidated into a single offense. It covers all common law property-taking offenses, including larceny, embezzlement, misappropriation, and fraud. It should assure a far greater uniformity of case interpretation than previously has been possible. The extensive list of circumstances under which the federal government might prosecute for theft is derived from the jurisdictional provisions of the numerous statutes being consolidated.

§ 1735. The existing mail fraud and wire fraud statutes have been extremely valuable in federal prosecutions of "white collar" crime, having received highly favorable interpretations by the federal courts. Incorporating these statutes within the general theft provision, as suggested by the Brown Commission, could well result in the loss of what is one of the most important bodies of federal case law. This section sets forth the provisions of those existing statutes, using, for the most part, the current language. A primary difference is that, since the central element of the offense is the scheme to defraud rather than the use of the mails for interstate communications as in existing law, the mailing for example, of fifty post cards in furtherance of a single scheme will constitute one offense rather than fifty. This meets the concerns that have been expressed about this aspect to the existing statutes.

A new statutory injunction remedy is provided in the procedural part of the Code to restrain violations of this section—a remedy that should be of considerable importance in protecting potential victims from "white collar" crime. This provision parallels the effective provision for injunctive relief which has long been available for violation of the fraud provisions of the Securities and Exchange Act. The limited injunctive relief currently granted the Postmaster General is too narrow to be effective.

§ 1741. This section consolidates more than 50 current statutes relating to counterfeiting and forgery—including statutes covering the counterfeiting and forgery of U.S. and foreign currency and securities; U.S. documents, badges, seals, etc.; writings used to influence an action of the U.S.; records of feder-

ally insured banks, and securities and tax stamps. The section creates a distinction between the terms "counterfeited" and "forged" and clearly defines each term, eliminating the confusion engendered by the common law use of these terms as synonyms. Counterfeiting (manufacturing a writing in its entirety) is treated as a more serious crime than forgery (altering an otherwise genuine writing).

§ 1742. This section consolidates more than 20 current statutes dealing with the unauthorized use of certain writings of the U.S., such as obligations and securities, seals, passports, licenses, citizenship documents, postage stamps, etc. The unauthorized issuance or use of such writings, where there is a federal interest, is given the same general coverage as in the forgery and counterfeiting area, thereby providing consistent and uniform coverage.

§ 1743. Consolidated in this section are approximately fifteen current statutes relating to the manufacture, use, or possession of implements suited for the counterfeiting of U.S. coins, currency, stamps, postmarks, vouchers, securities, seals, citizenship papers, visas, licenses, and foreign coins and currency.

§ 1751. This offense of commercial bribery, although broadly worded, is limited by the circumstances giving rise to federal jurisdiction to those cases where the payments involve the banking industry and government contractors. Contrary to the suggestion made by the Brown Commission, the reach of the section is not broadened beyond the bounds of current law. Existing federal jurisdiction over the offense is, in fact, contracted in order to avoid an unnecessary overlap with state criminal jurisdiction where there is no real need for federal intervention. The specific provisions of current law dealing with the televised quiz shows and "payola" in the record industry are maintained as misdemeanors outside the criminal code.

§ 1752. The section moves from title 29 of the United States Code the most serious form of bribery of union officials—involving payments from employers to influence union actions—and increases the penalty from a misdemeanor level to a three-year felony.

The present title 18 statutes covering bribery of pension and welfare officials is continued. Its reach is expanded, however, to cover all trust funds for employee benefits. Current law is also expanded to include the bribing of union officials in relation to union membership procedures and work placement, and in relation to the investment or expenditure of union assets—a coverage which will parallel that of the existing theft provisions.

§ 1765. This section retains existing penalty provisions of current law that punish such acts as distributing misbranded foods or drugs with intent to defraud, thereby preserving the availability of felony prison sentences for this form of "white collar" crime. The current penalty for sound recording piracy is increased to a felony level to reflect recent problems in that industry.

§ 1766. Offenses concerning the knowing distribution of adulterated meat, poultry, and eggs are moved into the criminal code and maintained as felonies in order to ensure public safety and protection.

Chapter 18

§§ 1801–1805. These sections generally maintain the substance of the existing federal law concerning riots, although the definition of "riot" has been contracted to require participation by at least five rather than three persons. In addition, federal jurisdiction over the offense of participating in a riot has been slightly contracted and the penalty for the offense has been reduced from five years to six months, unless the riot occurs in a federal prison or other federal detention facility, in which case the penalty is one year. Similar grading distinctions are applied to inciting or leading a riot and arming rioters.

§§ 1811–1812. These sections incorporate the existing penal provisions from regulatory offenses involving firearms and explosives.

§ 1813. As in a recently-enacted provision of existing law, the use of a firearm or explosive in the course of a crime is made an independently chargeable offense with a mandatory minimum penalty. This provision also covers, although by a lower mandatory penalty, the use of any other kind of dangerous weapon in the course of a felony.

§ 1821. These provisions parallel, in the code form, the new penal sanctions for drug offenses recently proposed to Congress to supplement those enacted in 1970. Basically, they will provide more severe penalties for persons who traffic in substantial quantities of hard narcotics, while continuing present law with respect to other drugs. A procedural section continues provisions for discharging first offenders found guilty of mere possession, as well as for expurgating

records of such offenders who are less than 21 years old. Possession of marijuana or other drugs continues to be a misdemeanor.

§§ 1831–1832. These provisions consolidate several current statutes covering gambling activities, restricting the application of federal law to large-scale illegal gambling and to protection of state anti-gambling policies. Under section 1831, engaging in an illegal gambling business of a special size, or accepting lay-off wagers, carries a seven-year penalty. Section 1832 prohibits interstate transmission of gambling information and transportation of gambling devices or proceeds from gambling.

Pending the recommendations of the newly-created Commission on the Review of the National Policy Toward Gambling, no changes in the wagering tax laws are included.

§ 1851. This section consolidates various provisions of current law dealing with obscenity. The section covers dissemination of obscene material to all persons other than those who have legitimate scholarly or medical reasons for possessing it. The definition of “obscene material” is more objective and precise than under current law; this will make the coverage of the law clearer to citizens and to the courts.

§ 1861. This section largely parallels the racketeering provisions of the Organized Crime Control Act of 1970. The penalty, however, is raised from 20 years to 30 years. Provisions for criminal forfeiture and civil remedies have been moved to the procedural part.

§ 1862. Current law does not contain an offense of leading a criminal syndicate, although several suggestions for such an offense have been made in the past. As a practical matter, the offense can never be prosecuted unless evidence has been secured as a result of a wiretapping warrant, unless an undercover agent has infiltrated the organization, or unless a member of the organization is willing to testify (occasional instances as such willingness are beginning to occur). The offense carries a thirty-year potential penalty, with a ten-year mandatory minimum.

§ 1863. This section continues the current law proscription on use of evidence to prosecute organized crime activities and raises the penalty from five to seven years.

§ 1881. This section incorporates the assimilated crimes provisions of current law. It is of less importance than in current law, separating the federal jurisdictional elements from the definitions of offenses, provides a readymade federal code for application in enclaves. Hence, all major offenses in enclaves will be prosecuted directly under other federal statutes, leaving only the relatively less important offenses to be assimilated.

Chapter 20

§ 2002. This provision has the effect of reducing all felonies outside title 18 to the level of a one-year misdemeanor, except for certain repeating offenders. This is made possible by moving all serious felonies into the proposed new criminal code, and by leaving outside title 18 only those offenses for which one-year’s imprisonment or less, is sufficient.

§ 2003. The section continues the court’s discretion to order the making of a presentence investigation and report in felony cases.

§ 2004. This section permits a judge to impose a requirement that certain defendants give notice to classes or persons affected by their convictions in order to facilitate private suits for restitution. There is no such express provision in current law. While the Brown Commission would have applied such a provision only to corporate offenders, this provision also includes individual offenders convicted of offenses involving fraud.

Chapter 21

§ 2101. This section follows current law in creating no presumption for or against probation.

§ 2102. Unlike current law, a minimum one-year term of probation is provided where probation is imposed for a felony.

§ 2103. A split sentence as a condition of probation, as provided by current law is eliminated. The same general effect can be achieved by alternative means.

§ 2104. This section is consistent with present law, rejecting the recommendation of the Brown Commission that probation be required to run concurrently with federal, state, or local prison terms. Since the purpose of probation is to observe how a person conducts himself out of custody, a probation term cannot sensibly run concurrently with a prison term.

Chapter 22

§ 2201. This section effects a material increase in current fine levels in order to make sanctions against "white-collar" crime more effective. The basic fine levels are approximately ten times the amounts recommended by the Brown Commission. The higher alternative limit of double the defendant's gain or the victim's loss was recommended by the Brown Commission. If the defendant is convicted of a non-title-18 offense for which the maximum fine is even higher than that permitted by section 2201, the highest of the three limits is the one that governs.

§ 2202. In imposing a fine, the court is required to take into consideration the defendant's ability to pay.

§ 2204. Imprisonment for willful refusal to pay a fine (as opposed to inability to pay a fine) is permitted for a limited period if the nonpayment is inexcusable. Inexcusable failure to pay by an organization renders the appropriate disbursement officer subject to imprisonment for the failure to pay.

Chapter 23

§ 2301. Under this provision, the judge retains power to sentence a defendant to any term of years up to the maximum set for the offense. Authority is provided for a judge to set a minimum term which a defendant must serve before being eligible for parole, but, unlike the current law which makes a minimum term automatic in the absence of a contrary action by the court, affirmative action by the court is required to impose such a term. The longest period that can be set by the court is one-fifth of the total term imposed, as opposed to one-third of the total term imposed as is the case under current law.

§ 2302. Included automatically within any sentence to imprisonment is a term of parole to which a defendant may be subject even if he has served the total terms of his imprisonment, and an additional contingent term of imprisonment, totalling no more than one year, to which he may be subject if he violates parole after having served the full term of imprisonment imposed. Such a provision, the substance of which was recommended by the Brown Commission, does not exist in current law. It assures that all prisoners will receive at least some street supervision.

§ 2303. The provisions of this section limit the power of a court to impose consecutive sentences. No such statutory limitation exists in current law.

Chapter 24

§ 2401. This section creates a constitutionally supportable death penalty provision. It would permit application of the death penalty only to treason, sabotage, or espionage, or to murder committed either by itself or in the course of seven other federal offenses. Even in such instances, the penalty could not be imposed unless the jury, in a separate proceeding, found that one or more factors in the list of aggravating factors existed, and that none of the factors in the list of mitigating factors existed. Upon such a special finding, however, imposition of the death penalty by the judge would be mandatory.

Chapter 42

§ 4202. This provision, unlike the corresponding provision recommended by the Brown Commission, creates no presumption either for or against parole. The Parole Board is required to reconsider a denial of parole annually instead of every three years as under current law.

§ 4204. Under current law, the period of parole lasts for the balance of the term of imprisonment imposed but not served, whether it is 20 days or 20 years. This section requires the imposition of a specific parole term of between one and five years, irrespective of the period of imprisonment imposed but unserved. Contrary to current law, the Parole Board is empowered to terminate a period of parole prior to its expiration date.

§ 4205. Contrary to current law, the Parole Board is empowered to increase, up to a total period of five years, any lesser term of parole previously imposed.

§ 4207. This section sets forth detailed provisions for the revocation of parole to accord with requirements of a recent Supreme Court decision.

EXHIBIT NO. 4

[Cautionary note. These tables should be used as a rough guide, since they attempt to compare materials that are not always comparable.]

TABLE 1

[This table traces the provisions of present title 18, United States Code, to the final report of the National Commission on Reform of Federal Criminal Laws (the Brown commission); to S. 1400, the Criminal Code Reform Act of 1973; and to S. 1.]

Present title 18	Brown commission	S. 1400	S. 1
1	109(j), (s), (z), (ab)	111	1-1A5.
2	401	401	1-2A6.
3	1303-04	1311	2-683.
4	1303	1311	2-683.
5	109(am)	111	1-1A4(68).
6	109(n)	111	1-1A4(34).
7	210	203	1-1A4(64).
8	1754(j)	1744	2-8E1(c).
9	210	203	Omitted.
10	219(a), (b)	111	1-1A4(31), (42).
11	109(m), 1112(4)(c), 1201(2)(a).	111	2-5A1(8).
12	Title 39	Omitted	Title 39.
13	209	1381	1-1A8.
14	211	111	1-1E6(c).
15	1745(b), (k)	1744	Omitted.
Ch. 2—Aircraft and motor vehicles:			
31	Omitted	111	Do.
32-33	1611-13, 1701-09	1611-15, 1701-04	2-8B1, 2-8B2, 2-8B5, 2-8B6, 1-2A4.
34	1601-09	1601-03	1-4E1.
35	1354, 1614	1343, 1616	2-7C3, 2-6D2.
Ch. 3—Animals, birds, fish and plants:			
41	1705, title 16	1703, title 16	2-8B6, title 16.
42	1411, title 16	Title 16	2-6G4, title 16.
43	1411, title 16	1343, title 16	2-6G4, title 16.
44	Title 16	Title 16	Title 16.
45	1705, title 16	Omitted	2-8B6.
46-47	Title 16	Title 16	Title 16.
Ch. 5—Arson: 81	1701	1701-04	2-8B1, 2-8B2.
Ch. 7—Assault:			
111	1301-2, 1367, 1611-14, 1616-18, 1631-33.	1302, 1357-58, 1611-14, 1616-17, 1813.	2-7C2, 2-7C3, 2-7C4, 2-6B1 2-6B2, 2-6B3.
112	1611-14, 1616-18, 1631-33	111, 1611-14, 1621-23, 1813; title 22.	2-7C2, 2-7C3.
113	1001, 1611-14, 1616-18	1001, 1601, 1611-14	2-7C2, 2-7C3, 1-2A4.
114	1612	1611-12	2-7C1.
Ch. 9—Bankruptcy:			
151	1756(3)	1764	2-8F1(d).
152	1321, 1351-52, 1356, 1361, 1732, 1756.	1341, 1343, 1764	2-8F1, 2-6D1, 2-6D2, 2-6D3, 2-6E1, 2-8D3.
153	1732-1737	1325, 1731	2-8D3, 2-8D6.
154-55	Title 11	Title 11	Title 11.
Ch. 11—Bribery, graft and con- flict of interest:			
201	1321, 1361-63, 1732, 1741- (k), 3501.	111, 1321-22, 1351-52	1-1A4(58), 2-6E1 2-6E2, 2-8D3, 1-4A3.
202	Title 5	Title 5	Title 5.
203	1352, 1365, title 5	1352, 1354, title 5	2-6E1, 2-6E2, title 5.
204	Title 5	Title 5	Title 5.
205	1363, 1365, title 5	1353-54; title 5	2-6E2, title 5.
206	Title 5	Title 5	Title 5.
207-09	1327, title 5	1352, title 5	2-6E3, title 5.
210	1361, 1364	1354-55	2-6E1, 2-6E2.
211	1361, 1364-65, title 5	1354-55, title 5	2-6E1, 2-6E2, title 5.
212-16	1357, title 12	1751, title 12	2-3F2, title 12.
217	1361-63	1351-53	2-6E1, 2-6E2.
218	3301(2), title 5	Title 12, proc. pt. title 18	1-4C1(1), title 5.
219	1206, title 5	Title 5	2-5C5, title 5.
224	1757	1753	2-8F2.
Ch. 12—Civil disorders:			
231	1801-04	1801-02, 1804	2-9B1, 2-9B3, 2-9B4.
232	1801-04	111, 1805	2-9A1.
233	206	205	1-1A6(g).
Ch. 13—Civil rights:			
241	1501	1501	2-7F1.
242	1502-1521	1501-02	2-7F1, 2-7F5.
243	Title 28	Omitted	2-7F2, title 28.
244	Title 10	Title 10	Title 10.
245	1511-16	111, 1511-13	2-7F2, 2-7F3, 2-7F4.3

TABLE 1—Continued

Present title 18	Brown commission	S. 1400	S. 1
Ch. 15—Claims and services in matters affecting Government:			
281	Title 5	Title 10	Title 5.
283	do	do	Do.
285	1356, 1732, 1735(2)(e), 1753	1731, 1743	2-6D3, 2-8D3.
286	1352, 1732	1343, 1731	2-6D2, 2-8D3, 1-2A5.
287-89	1352, 1732	1343, 1731	2-6D2, 2-8D3.
290	Title 38	Title 38	Title 38.
291	Title 28	do	Title 28.
292	1363 title 5	Title 5	2-6E2.
Ch. 17—Coins and currency:			
331	1751	1741	2-8E1.
332	1732, 1751	1731, 1751	2-8D3, 2-8E1.
333	Title 12	Title 12	Title 12.
334	1753	1742	2-8Ea.
335	1753	1742	2-8E.
336-37	Title 31	Title 31	Title 31.
Ch. 18—Congressional assassination kidnapping and assault: 351.			
	[Omitted as separate Section].	1001-02, 1601, 1611-14, 1621-23.	2-7B1, 2-7D1, 2-7C2, 1-2A5, 3-10A1(b).
Ch. 19—Conspiracy:			
371	1004, 1732-34, 1751	1002, 1301	1-2A5, 2-8D3, 2-8D5.
372	103, 1303, 1352, 1366-67, 1401, 1511(c).	1002, 1302, 1357-58	1-2A5, 2-6B1, 2-6B3, 2-6E3, 2-6E4, 2-6D2, 2-7F1.
Ch. 21—Contempts:			
401	1341-45, 1349	1331	2-6C6.
402	1341-45, 1349	1331-36	2-6C1, 2-6C2.
Ch. 23—Contracts.			
431-33	1372, title 5	Title 5	2-6F3, title 5.
435	Title 15	Title 41	Title 15.
436	1733, title 18, pt. E	Title 5	2-8D3.
437	1372; title 25	do	2-6F3; title 25.
438-39	1363; title 25	Title 25	2-6E2; title 25.
440	Title 39	Title 39	Title 39.
441	Title 41	do	Title 41.
442	Title 44	Title 44	Title 44.
443	1356; title 41	Title 41	2-6D3; title 41.
Ch. 25—Counterfeiting and forgery:			
471-73	1751	1741	2-8E1.
474	1751-52	1743	3-8E3, 2-8E1.
475	Title 31	Title 31	Title 31.
476-77	1752	1742-3	2-8E3.
478	1751	1741	2-8E1.
479-80	1751	1741	2-8E1, 28E2.
481	1751-52	1743	2-8E1, 2-8E2, 2-8E3.
481-83	1751	1741	2-8E1, 28E2.
484	1751	1741	2-8E2.
485-86	1751	1741	2-8E1.
487-88	1752	1743	2-8E3.
Ch. 26—Counterfeiting and forgery:			
489	1411; title 31	Title 31	2-6G4, title 31.
490	1751	1741	2-8E1.
491	1755	Title 31	2-8E5.
492	Title 31	do	1-4A4; title 31.
493-97	1751	1343, 1741	2-8E2.
498	1751	1741	2-8E1, 2-8E2.
499	1381, 1751, 1753	1301, 1741	2-6F4, 2-8E1, 28E2.
500	1751, 1753	1741, 1742	2-8E1.
501	1751-53	1741-42	2-8E1, 2-8E3.
502	1751	1741	2-8E1.
503	1751-52	1741, 1743	2-8E2, 2-8E3.
504	Title 31	Title 31	Title 31.
505	1351-52, 1751	1341, 1343, 1471-42	2-6D1, 2-6D2, 2-8E1.
506	1751-52	1741	2-8E1.
507	1751	1741	2-8E2.
508	1751	1741	2-8E1.
509	1752	1741-43	2-8E3.
Ch. 27—Customs:			
541-42	1411	1343, 1421, 1423	2-6G4.
543-45	1411; title 19	Title 19, 1421-23; proc. part title 18.	2-6G4; title 19.
546	Title 22	Title 22	Title 22.
547	1411	1421-2	2-6G4.
548	1411, title 19	1343, 1421; proc. part title 18.	2-6G4; title 19.
549	1411, 1732	1343, 1345, 1421, 1731-32	2-6G4, 2-8D3.
550	1352, 1732	1343, 1731	2-6D2, 2-8D3.
551	1323, 1367, 1411	1325, 1345	2-6B3, 2-6C1, 2-6G4.
552	401, 1002	Omitted	1-2A6, 2-9F5.

TABLE 1—Continued

Paesent title 18	Brown Commission	S. 1400	S. 1
Ch. 29—Elections and political activities:			
591	Omitted	Omitted	1-1A4.
592	1535	do	2-6H1.
593-94	1511, 1531	Omitted; 1521	2-6H1, 2-7F3.
595	1511, 1531-32	1523	2-6H1, 2-7F2, 2-7F3.
596	Omitted	Omitted	Omitted.
597	1531	1521	2-6H1.
598	1532	1523	2-7F2.
599-600	1364-65, 1531	1355; title 2	2-6E2.
601	1511, 1532-33	1523	2-6H1, 2-7F2.
602-03	1534	1525	2-6H2.
604-05	1532	Omitted	2-7F2.
606	1533	1524	2-6E5.
607	1534	Omitted	2-6H2.
608-12	Title 2	Title 2 (omitted in part)	Title 2.
613	1541	1526	2-6H3.
Ch. 31—Embezzlement and theft:			
641	1732	1731-32	2-8D3.
642	1732, 1752	1731, 1742-43	2-8D3, 2-8E3.
643	1732, 1737; title 5	1731	2-8D3, 2-8D6; title 5.
644	1732, 1737; title 12	1731	2-8D3; 2-8D6; title 12.
645-47	1732, 1737; title 28	1731	2-8D3, 2-8D6; title 28.
648-53	1732, 1737; title 5	1731; title 5	2-8D3, 2-8D6; title 5.
654	1732, 1737	1731	2-8D3, 2-8D6.
655	1732, 1737, 3501	1731	1-4A3, 2-8D3, 2-8D6.
556-57	1732, 1737	111, 1731	2-8D3, 2-8D6.
658	1738	1736	2-8D7.
659	206, 707, 1732, 1737	205, 1731-33	2-8D3, 2-8D6, 3-11B5, 2-8D4.
660	707, 1732, 1737	1731	2-8D3, 2-8D6, 3-11B5.
661	1732, 1737	1731	2-8D2, 2-8D3, 2-8D6.
662	1732, 1737	1732	2-8D4.
663-64	1732, 1737	1731	2-8D3, 2-8D6.
Ch. 33—Emblems, insignia and names:			
700	Title 4	Title 4	2-9G1.
701	do	do	Title 4.
702	Titles 10, 42	Title 10, title 42	Titles 10, 42.
703	Title 22	Title 22	Title 22.
704	Title 10	Title 10	Title 10.
705-06	Title 36	Title 36	Title 36.
707	Title 7	Title 7	Title 7.
708	Title 22	Title 22	Title 22.
709	Title 4	Title 12, title 28	2-8F4; title 4.
710	Title 10	Title 10	Title 10.
711	Title 7	Title 7	Title 7.
712-13	Title 4	Title 4	Title 4.
714	Title 43	Title 43	Title 43.
715	(Not considered)	Title 16	(Not considered.)
Ch. 35—Escape and rescue:			
751	1306	1314	2-6B5, 1-2A4.
752-53	1306	1001, 1314 (omitted in part).	2-6B5, 1-2A6, 2-6B3.
754	1301	Omitted	2-6B1.
755	1306-07	do	Omitted.
756-77	1120	1118	2-5B11.
Ch. 37—Espionage and censorship:			
792	1118	1311	2-5B10.
793-94	1112-13	1002, 1121-24	2-5B7, 2-5B8.
795-97	1112-13, 1712; title 50	Title 50	2-5B7, 2-5B8, 2-8C5; title 50.
798	1114	Omitted	2-5B8.
799	1712; title 42	Title 42	2-3C5; title 42.
Ch. 39—Explosives and other dangerous articles:			
831	Title 49	Title 49	Title 49.
832-34	1602, 1613, 1701, 1704; 1615; title 49.	1615; title 49	2-7B3, 2-8B1, 2-8B3; title 49.
835	Title 49	Title 49	Title 49.
836	Title 15	do	Title 15.
Ch. 40—Importing, manufacturing, distribution and storage of explosive material:			
841	Title 26	Title 15	Title 26.
842	1812; title 26	do	2-9D3, title 26.
843	Title 26	do	Title 26.
844	109(i), 1614, 1618, 1701, 1705, 1811, 1814, 3202-2(e); title 26.	111, 1601, 1611-13, 1615-17, 1701-04, 1811, 1813, proc pt. title 18.	2-7C3, 2-8B1, 2-8B5, 2-9D2, 2-9D5; title 26.
845-48	Title 26	Title 15	Title 26.

TABLE 1—Continued

Present title 18	Brown commission	S. 1400	S. 1
Ch. 41—Extortion and threats:			
871	1614-15	111, 1616-18	2-7C3.
872	1381, 1617, 1732-33	1722	2-6F4, 2-9C3, 2-9C4.
873	1381, 1617, 1732-33	1723	2-9C3, 2-9C4.
874	1732	1722-23	2-9C3.
875-77	1614, 1617-18, 1732-33	1616-17, 1722-23	2-7C3, 2-9C3, 2-9C4.
Ch. 42—Extortinate credit transactions:			
891-96	1771	111, 1724	2-6D2.
Ch. 43—False personation:			
911	1352	1343; title 8	2-9C2.
912-13	1381	1361, 1731, 1361	2-6F4.
914	1732-33	1731-32	2-8D3.
915	1381	1731	2-6F4.
916	Title 7	Title 7	Title 7.
917	Title 36	Title 36	Title 36
Ch. 44—Firearms:			
921	Title 26	Title 15	Title 26.
922	1812; title 26	do.	2-9D3; title 26.
923	Title 26	do.	Title 26.
924	1811, 3202(2)(e); title 26	1343, 1812-13; title 15	2-9D2, 1-4B2(b)(2)(v); title 26.
925-28	Title 26	Title 15	Title 26.
Ch. 45—Foreign relations:			
951	1206; title 22	1128	2-5C5; title 22.
952	1112-14	1121-24	2-5B7, 2-5B8.
953	Omitted	Omitted	Omitted.
954	1353	do.	2-6D2(a)(7).
955	Title 22	Title 22	Title 22.
956	1202	1202	2-5C1, 1-2A5.
957	1001-02	Omitted	Omitted.
958	1203	1203	2-5C2.
959	1203; title 22	1203	2-5C2; title 22.
960	1201-02	1201	2-5C1.
961	1204-05; title 22	Title 22	2-5C3, 2-5C4; title 22.
962	1201, 1204-05; title 22	do.	2-5C1, 2-5C3, 2-5C4; title 22.
563-64	1204-05; title 22	1204; title 22; 1001, 1204; proc. part title 18.	2-5C3, 2-5C4; title 22.
965	1204-05, 1352; title 22	1204; title 22; proc. part title 18.	2-5C3, 2-5C4, 2-6D2; title 22.
966	1352; title 22	1204, 1343; title 22; procd. part title 18.	2-6D2; title 22.
967	1204-05; title 22	1204; title 22; proc. part title 18.	2-5C3, 2-5C4; title 22.
969	Title 22	Title 22	Title 22.
970	(Not considered)	1701-04	(Not considered.)
Ch. 47—Fraud and false statements:			
1001	1352	1343	2-6D2.
1002	1751	1741	2-8E2.
1003	1732, 1751	1343, 1731, 1741	2-8D3, 2-8E2.
1004	1753; title 12	1742	Title 12.
1005	1352, 1732, 1751, 1753; title 12.	1343, 1741, 1742	2-6D2, 2-8D3; 2-8E2, title 12.
1006	1352, 1372, 1732, 1751, 1753, 1758; title 12.	1343, 1356, 1742, 1751	2-6D2, 2-6F3, 2-8D3, 2-8E2, 8F3; title 12.
1007	1352, 1732	1343, 1731	2-6D2, 2-8D3, 2-8E2.
1008	1352, 1732, 1751	1343, 1741	2-6D2, 2-8D3, 2-8E2.
1009	Title 12	Title 12	Title 12.
1010	1352, 1732, 1751, 1753	1343, 1741	2-6D2, 2-8D3, 2-8E2.
1011	1352, 1732	1343	2-6D2, 2-8D3.
1012	1342, 1356, 1361; title 42	1343, 1731, 1741; title 5; 12.	2-6D2, 2-6D3, 2-6E1; title 42.
1013	1732	1343, 1731	2-8D3.
1014	1352, 1732	1343	2-6D2, 2-8D3.
1015	1108, 1221, 1224, 1352, 1753.	1301, 1343, 1742	2-6D2, 2-5D3, 2-5D1.
1016	1352, 1753	1343, 1742	2-6D2.
1017-19	1753	1343, 1742, 1743	2-6D2.
1020	1352, 1732-33	1343	2-6D2, 2-8D3.
1021-22	1753	1343, 1731, 1742	2-6D2.
1023	1732-37	1731	2-8D3, 2-8D6.
1024	1732; title 10	1731, 1732	2-8D3; title 10.
1025	1732, 1753	1731	2-8D3, 2-6D2.
1026	1352	1343	2-6D2.
1027	1352, 1732-33	1343	2-6D2, 2-8D3.
Ch. 49—Fugitives from justice:			
1071-72	1303	1311	2-6B3.
1073-74	1310	1316; proceeding part title 18 (omitted in part.)	2-6B7.

TABLE 1—Continued

Present title 18	Brown commission	S. 1400	S. 1
Ch. 50—Gambling:			
1031	Title 46	Title 46	Title 46.
1082	1831; title 46	1831; title 46	2-9F1; title 46.
1083	Title 46	Title 46	Title 46.
1084	1831-32	205, 1832; title 47	2-9F1, 2-9F2.
Ch. 51—Homicide:			
1111	1601-02	1601	2-7B1, 2-7B2.
1112	1601-03	1001, 1602-03	2-7B3, 2-7B4.
1113	1001	1001	2-7B1, 2-7B3, 1-2A4.
1114	1601-03	111, 1601-03, 1611-14	2-7B1, 2-7B3, 2-7B4.
1115	1601-03	1601-03	2-7B4.
1116-17	(Not considered)	111, 1002, 1601-03	[Omitted as separated section].
Ch. 53—Indians:			
1151-53	211	203	1-1A6(b).
1154-56	Title 25	Omitted	Title 25.
1158-62	do	1343; title 25; omitted in part.	Do.
1163	1732	1731-32	2-8D3.
1164-65	Title 25	Title 25	Title 25.
Ch. 55—Kidnapping:			
1201	1631-33; 1635	1002, 1621-24	2-7D1, 2-7D4.
1202	1304	1312	2-6B3(a)(3).
Ch. 57—Labor: 1231	1551	Omitted	2-77F6.
Ch. 59—Liquor traffic: 1261-65	Title 27	Title 27	Title 27.
Ch. 61—Lotteries:			
1301-03	1831-32	1832; Title 39	2-9F1, 2-9F2.
1304-05	Omitted	Title 47	Omitted.
1306	Title 12	Title 12	Title 12.
Ch. 63—Mail fraud: 1341-43	1001, 1732, 1751	1734	2-8D5.
Ch. 65—Malicious mischief:			
1361	1705	1701-04	2-8B5, 2-8B6.
1362	1107, 1705	111-1112, 1701-04	2-5B4, 2-8B5, 2-8B6.
1363	1107, 1613, 1704-05	do	Do.
1364	1701, 1705	1701-04	2-8B1, 2-8B2.
Ch. 67—Military and Navy:			
1381	1119	1117, 1311	2-5B10.
1382	1712	Title 50	2-8C5.
1383	1712; title 10	do	2-8C5, title 10.
1384	1841-43	Omitted	2-9F3, 2-9F4.
1385	Title 10	Title 10	Title 10.
Ch. 69—Nationality and citizenship:			
1421	1732, 1737; title 28	1731	2-8D3, 2-8D6, title 28.
1422	1362, 1732	1351-52, 1731	2-6E2, 2-8D3.
1423	1225, 1352, 1531, 1751, 1753.	1224-25, 1301, 1341, 1343, 1741, 1742.	2-5D3, 2-6D2.
1424	1221, 1224, 1351-52, 1753	1224, 1301, 1341, 1343, 1742	2-5D1, 2-5D3, 2-6D1, 2-6D2.
1425	1224, 1351-52, 1361, 1753	1224, 1301, 1343, 1742	2-5D3, 2-6D1, 2-6D2, 2-8E6.
1426	1351-52, 1751-52	1341, 1343, 1741-43	2-6D1, 2-6D2, 2-8E2, 2-8E3.
1427	401, 1002	Title 8	1-2D6, 2-5D3.
1428	Title 8	do	Title 8.
1429	1342-43	1332-33	2-6C2.
Ch. 71—Obscenity:			
1461	1851	1851	2-9F2.
1462-6	1851	1851; proc. part title 18	2-9F5.
Ch. 73—Obstruction of justice:			
1501	1301-03, 1611-12	1302, 1611-14	2-6B1, 2-6B2, 2-7C1, 2 7C2.
1502	1301-02	1302, 1611-14	2-6B1, 2-6B2.
1503	1301, 1321-24, 1327, 1346, 1366-67.	1321-25, 1357-58	2-6B1, 2-6C1, 2-6C3, 2-6F2, 2-6C4, 2-6E3, 2-6E4.
1504	1324	1326	2-6C3.
1505	1301, 1321-23, 1327, 1346, 1366-67.	1321-25	2-6B1, 2-6C1, 2-6F2, 2-6C4, 2-6E3, 2-6E4.
1506	1323, 1352, 1356, 1732	1325, 1343, 1345, 1731	2-6C1, 2-6D2, 2-6D3, 2-8D3.
1507	1325	1328	2-6C4.
1508	1326	1327	2-6C5.
1509	1301	1302, 1357	2-6B1.
1510	1322, 1367	111, 1322-24	2-6C1, 2-6E4.
1511	1361, 1831-32	1351-52, 1831	2-9F1, 2-6E1.
Ch. 75—Passports and visas:			
1541	1381, 1753	1361, 1742	2-6F4, 2-6D2, 2-8E6.
1542	1225, 1352, 1753	1221-22, 1225, 1343	2-5D3, 2-6D2.
1543	1751	1225, 1741, 1742; title 22	2-8E2.
1544	401, 1002, 1221-22, 1225; title 22.	1221-22, 1225; title 22	1-2A6, 2-5D1, 2-5D; title 22.
1545	Title 22	Title 22	Title 22.
1546	1221-22, 1351-52, 1751-53	1221-22, 1341, 1343, 1741, 1743.	2-5D1, 2-6D1, 2-6D2, 2-8E2, 2-8E3.

TABLE 1—Continued

Present title 18	Brown commission	S. 1400	S. 1
Ch. 77—Peonage and slavery:			
1581	1301, 1631-32	1302, 1622	2-6B1, 2-7D1, 2-7D2.
1582	401, 1002	Omitted	1-2A6, 2-7D2.
1583	1631	1622	2-7D1.
1584-85	1631-32	1622	2-7D1, 2-7D2.
1586	1602	Omitted	Omitted.
1587-88	1631-32	1622	2-7D1, 2-7D2.
Ch. 79—Perjury:			
1621	1351	1341	8-6D1.
1622	401, 1003	1003	2-6D1, 1-2A6, 1-2A3, 2-6C1
1623	1351	204, 1341, 1346	-26D1, 2-6D2.
Ch. 81—Piracy and privateering:			
1651	201(1); chs. 16-17	204	E-1A4 (53) and (54); Chs. 7, 8.
1652	208(h)	204	1-1A7, 2-7B1, 2-8B2.
1653	208(g)	204	1-A7.
1654	208(h), 401, 1002	204	1-1A7, 1-2A6.
1655	1805	204	2-7D5.
1656	1732	204	2-8D3.
1657	401, 1002-04, 1805	204	2-7D5, 1-2A6, 1-2A4, 1-2A5
1658	1613, 1705, 1732	204	2-8B6, 2-8D3.
1659	201(a)(1), 1721	204	1-1A4 (54) and (65), 2-8D2.
1660	1304, 1732	204	2-8D4, 2-6B3.
1661	201(1), 1721	204	1-1A4 (54), 2-8D2.
Ch. 83—Postal Service:			
1691-99	Title 39	Title 39	Title 39.
1700	1737; title 39	do	2-8D6; title 39.
1701	1301	1302	2-6B1.
1702	1564, 1732	1302, 1531, 1731	2-7G3, 2-8D3.
1703	1564, 1705; title 39	1302, 1531, 1703; title 39	7-7G3, 2-8B6; title 39.
1704	1734; title 39	1731	2-8D3; title 39.
1705	1301, 1564, 1705	1302, 1703	2-6B1, 2-7G3, 2-8B6.
1706	1301, 1705, 1732	1302, 1703, 1731	2-6B1, 2-8B6, 2-8D3.
1707-10	1732	1731-32	2-8D6.
1711	1732, 1737	1731; title 39	2-8D3, 2-8D6.
1712	1352, 1732; title 39	1343, 1731; title 39	2-6D2, 2-8D3; title 39.
1713	1753; title 39	1942	2-6D2; title 39.
1714	Omitted	Title 39	Omitted.
1715	Title 39	do	Title 39.
1716	1001, 1601-03, 1612-13, 1701-02, 1704-05; title 39.	1601-03, 1611-15; title 39	Chs. 7-8; title 39.
1716A	Title 39	Title 39	Title 39.
1717	1001, 1003; title 39	1001, 1003; title 39	1-2A3; 1-2A4, title 39.
1718	Title 39	Title 39	Title 39.
1719	1733	1731	2-8D3.
1720	1733, 1751	1731, 1741	2-8D3.
1721	1732, 1737; title 39	1731	2-8D3, 2-8D6; title 39.
1722	1352, 1733; title 39	1343, 1731	2-6D2, 2-8D3; title 39.
1723	1733; title 39	1731; title 39	2-8D3; title 39.
1724	Title 39	Title 39	Title 39.
1725	1733; title 39	1731; title 39	2-8D3; title 39.
1726-28	1732; title 39	1352, 1731	2-8D3; title 39.
1729-31	1381; title 39	Title 39	2-6F4; title 39.
1732	1753; title 39	1343, 1742	2-6D2; title 39.
1733	1733; title 39	1731	2-8D3; title 39.
1734	Title 39	Title 39	Title 39.
1735-37 (new)	do	do	Do.
Ch. 84—Presidential assassination, kidnapping and assault:			
1751	1001, 1004, 1601-03, 1611-12, 1631-32; title 18, pt. D.	111, 1001-02, 1601-02, 1611-14, 1621-23; proc. pt. title 18.	2-7B1, 2-7D1, 1-2A4, 1-2A5, 3-10A1.
1752	(Not considered)	205, 1871; title 3	2-6B1, 2-8B6.
Ch. 85—Prison-made goods:			
1761-62	Title 15	Title 15	Title 15.
Ch. 87—Prisons:			
1791	1309; title 18, pt. E	1315	2-6B6, 3-12C1.
1792	1308-09	1315, 1801-03	2-6B6, 2-9B1, 2-9B3, 1-2A4, 1-2A5.
Ch. 89—Professions and occupations:			
1821	Title 15	Title 15	Title 15.
Ch. 91—Public lands:			
1851	1732	1731	2-8D3.
1852-54	1705-1732	1702-03, 1731-32	2-8B6, 2-8B3.
1855	1702, 1704-05	1702-03	2-8B2, 2-8B3.
1856	1703	Title 43	2-8B4.
1857-58	1705	1703	2-8B6.
1859	1301	1302	2-6B1.
1860	1617; title 43	Title 43	2-9C4; title 43.
1861	1732; title 43	do	2-8D3; title 43.
1862-63	1712	Omitted in part; 1712	2-8C5.

TABLE 1—Continued

Present title 18	Brown commission	S. 1400	S. 1
Ch. 93—Public officers and employees:			
1901	1732, 1737, 3501; title 5	1731	2-8D3, 2-8D6, 1-4A3; title 5.
1902	1371-72	1356, title 5	2-6F1, 2-6F3.
1903	1372	1356	2-6F3.
1904	1371-72	Omitted	2-6F1, 2-6F3.
1905	1371, 3501	Title 5	2-6F1, 104A3.
1906	1371; title 12	Title 12	2-6F1; title 12.
1907-08	1371; 3501; title 12	do	2-6F1, 1-4A3; title 12.
1909	1363; title 12	do	2-6E2; title 12.
1910	Title 28	Title 28	Title 28.
1911	1732, 1737; title 28	do	2-8D3, 2-8D6; title 28.
1912	1363, 1732, 3501	1353	2-6E2, 2-8D3, 1-4A3.
1913	Title 5	Title 5	Title 5.
1915	Title 19	Title 19	Title 19.
1916	1737; title 5	1731; title 5	2-8D6; title 5.
1917	1352, 1512; title 5	1343; title 5	2-6D2, 2-7F3; title 5.
1918	Omitted	Title 5	Omitted.
1919	1352, 1732	1343, 1731	2-6D2, 2-8D3.
1920	1352-1732	1341, 1343, 1731	6-6D2, 2-8D3.
1921	1732; title 5	1731	2-8D3; title 5.
1922	1352, 1511, 1617; title 5	1343; title 5	2-6D2, 2-7F2, 2-9C4; title 5.
1923	1732, 1734	1731	2-8D3.
Ch. 95—Racketeering:			
1951	1001, 1004, 1721, 1732	111, 1721-22	2-9C1, 2-9C3, 2-8D2, 2-8D3.
1952	1361, 1403, 1701, 1732, 1822-24, 1831-32, 1841.	1321-22, 1351-52, 1701, 1721-23, 1821-22, 1824, 1831-32, 1841.	2-9C1, 2-6E1, 2-6G3, 2-8B1, 2-9F1, 2-9E2, 2-9F4.
1953	1831-32	205, 1832	2-9F2.
1954	1758; title 18, pt. E	1752	2-8F2.
1955	1831; title 18, pt. D	1831; proc. pt., title 18	2-9F1, 1-4A4.
Ch. 96—Racketeer influenced and corrupt organizations:			
1961	Not considered	111, 1861	2-9C1.
1962	do	1002, 1861	2-9C1.
1963	do	1861; proc. pt., title 18	2-9C1, 1-4A4.
1964	do	Proc. pt. title 18	3-13A1, 3-13A2, 3-13A3.
1965	do	do	3-13A4.
1966	do	do	3-13A4.
1967	do	do	3-13A4.
1968	do	do	3-13A5.
Ch. 97—Railroads:			
1991	1001, 1711, 1713	1711	2-7B1, 2-8D2, 1-2A4.
1992	707, 1601-03, 1613, 1701-02, 1705.	1601-03, 1611-14, 1701-04; porc. pt., title 18.	2-7B1, 2-7B2, 2-7B3, 2-7B4, 2-8B1, 2-8B2, 2-8B5, 2-8B6.
Ch. 99—Rape:			
2031	1641-42	1631-32	2-7E1.
2032	1641, 1646	1632	2-7E2.
Ch. 101—Records and reports:			
2071	1356, 1705, 1732	1345, 1731	2-6D3, 2-8B6, 2-8D3.
2072	1753; title 7	1343, 1742	2-6D2, title 7.
2073	1732-33, 1737, 1753	1343, 1731, 1741	2-8D3, 2-8D6, 2-6D2.
2074	Title 15	Title 15	Title 15.
2075	Title 5	Title 5	Title 5.
2076	Title 28	Title 28	Title 28.
Ch. 102—Riots:			
2101-02	206, 707, 1801-02	205, 18-1-03, 1805	2-9B1, 2-9B2, 2-9A1.
Ch. 103—Robbery and burglary:			
2111-12	1721	1721	2-8D2.
2113	1601-3, 1611-13, 1711, 1721, 1732.	111, 1601-02, 1611-14, 1711, 1721, 1731-32.	2-7B1, 2-7B2, 2-7B3, 2-7B4, 2-7C1, 2-7C2, 2-8C1, 2-8C2, 2-8D1, 2-8D2, 2-8D3.
2114	1611-13, 1721	1611-14 1721	2-7C1, 2-7C2, 2-8D1, 2-8D2.
2115	1711	1711	2-8C2.
2116	1301, 1611-12, 1712-13	1302, 1611-14, 1712	2-6B1, 2-7C1, 2-7C2, 2-8C5.
2117	206, 707, 1001, 1712-13	205, 1711; proc. pt., title 18.	1-2A4, 2-8C5, 2-8C2.
Ch. 105—Sabotage:			
2151	1105	111	2-5B4.
2152	1107, 1301, 1705, 1712	1111-12, 1302, 1701-1704, 1712.	2-5B4, 2-6B1, 2-8B6, 2-8C5.
2153-54	1004, 1105-07	1002, 1111-1112	2-5B4, 1-2A5.
2155-56	1105, 1107	1002, 1111-12	2-5B4, 1-2A5.
2157	Omitted	Omitted	Omitted.

TABLE 1—Continued

Present title 18	Brown commisson	S. 1400	S. 1
Ch. 107—Seamen and stowaways:			
2191	1612, 1633	1611-13, 1623	2-7C1, 2-7C2, 2-7D3.
2192	1001, 1003-04, 1633, 1801, 1803.	1117, 1621-23, 1626	2-5B6, 2-7D3, 2-9B1, 2-B3, 1-2A3, 1-2A4, 1-2A5.
2193	1805	1626	2-7D5.
2194	1631-33	1621-23	2-7D1, 2-7D2, 2-7D3.
2195	Title 46	Title 46	Title 46.
2196	1613	1615	2-8B6.
2197	1732, 1751, 1753	1731, 1741-43	2-8D3, 2-8E2.
2198	1642	1631-32	2-7E2.
2199	1714, 1733	111, 1713	2-8D3.
Ch. 109—Searches and seizures:			
2231	1301, 1366, 1611-13, 1616	1302, 1358, 1611-14, 1813	2-6B2, 2-6E3, 2-7C2, 2-7C3, 2-7C4.
2232	1301, 1323	1302, 1325	2-6B1, 2-6B2, 2-6C1.
2233	1301, 1323, 1401, 1732	1302, 1731	2-6B1, 2-6C1, 2-6G1, 2-8D3.
2234-36	1521	1501-02	2-7F5.
Ch. 111—Shipping:			
2271	1004, 1705, 1732	1002, 1702-04, 1731	2-8B6, 2-8D3, 1-2A5.
2272	1705, 1732	1702-04, 1731	2-8B6, 2-8D3.
2273	1705	1702-04	2-8B6.
2274	1001-04, 1705; title 46	204, 1002, 1301, 1702-04; Proc. pt. title 18.	2-8B6, 1-2A3, 1-2A4, 1-2A5; title 46.
2275	1601, 1611-13, 1701-05	1615, 1701-04	2-7B1, 2-7C1, 2-7C2, 2-8B1, 2-8B2, 2-8B3, 2-8B4, 2-8B5.
2276	1001, 1705, 1711-13	1703, 1711	2-8B6, 2-8C2, 2-8C5, 1-2A4.
2277-78	Title 46	Title 46	Title 46.
2279	1712; title 46	do	2-8C5; title 46.
Ch. 113—Stolen property:			
2311	1735(7), 1736, 1741(f), 1754 (k), (1).	111, 1744	2-8A1(12), 2-8A2.
2312	1732, 1736	1731	2-8D3, 2-8D8.
2313	1732	1732	2-8D3.
2314-15	1732, 1751, 1752	1301, 1731, 1732, 1741, 1743	2-8D3, 2-8E2, 2-8E3.
2316-17	1732	1732	2-8D3.
2318	Title 15	Title 15	Title 15.
Ch. 115—Treason, sedition, and subversive activities:			
2381	1101-02	1101	2-5B1, 2-5B2.
2382	1118	Omitted	2-5B10.
2383-85	1103	1102, 1002, 1101-02, 1002, 1103.	2-5B3.
2386	1104; title 50	Omitted	2-9D1; title 50.
2387	1110	1117	2-5B6.
2388	1004, 1109-11, 1303	1002, 1114, 1116-17, 1311	2-5B5, 2-6D2(a)(6), 2-6B3, 1-205.
2389-90	1101-03, 1203	1203	2-5B1, 2-5B2, 2-5B3, 2-5C2.
2391	1004, 1109-11, 1303	Title 50	2-5B6, 2-6D2(a)(6), 2-6B3, 1-205.
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2421	1841	1841	2-9F4.
2422-23	1631-32, 1841-42	1621-22, 1841	2-7D1, 2-7D2, 2-9F4.
2424	Omitted	Omitted	Omitted.
Ch. 119—Wire interception and interception of oral communications:			
2510	1563, title 18, pt. D	111, 1534	3-10C1.
2511	1561; title 18, pt. D; title 47	1001, 1532; proc. pt. title 18	2-7G1.
2512	1562	1533	2-7G2.
2513	5802	Proc. pt. title 18	1-4A4, 3-13A3.
2514		do	3-10D2.
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2518	5806	do	3-10C3, 3-10C5, 3-11E1.
2519	5807	do	3-10C4.
2520	5808	do	3-13A2.
Ch. 207—Release:			
3150	1305	1313	2-6B4.
Title 18 app.:			
1201	1812; title 26	1812; title 15	Omitted.
1202	do	do	Do.

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This table traces the provisions of the Final Report of the National Commission on Reform of Federal Criminal Laws ("the Brown Commission") to the provisions of S. 1400, the "Criminal Code Reform Act of 1973."

Brown Commission	S. 1400	Brown Commission	S. 1400
Ch. 1: Preliminary provisions:		Ch. 10: Offenses of general applicability:	
101 -----	101	1001 -----	1001
102 -----	102	1002 -----	Omitted
103 -----	Omitted	1003 -----	1003
104 -----	Omitted	1004 -----	1002
109 -----	111	1005 -----	1004
Ch. 2: Federal penal jurisdiction:		1006 -----	Omitted
201 -----	Omitted	Ch. 11: National security:	
202 -----	Omitted	1101 -----	1101
203 -----	1001-03	1102 -----	1101
204 -----	303	1103 -----	1101-1103
205 -----	202	1104 -----	1104
206 -----	205	1105 -----	1111
207 (see 211) -----	Omitted	1106 -----	1112
208 -----	204	1107 -----	1111
209 -----	1881	1108 -----	1115
210 -----	203	1109 -----	1115-16
211 -----	203	1110 -----	1117
212 -----	204	1111 -----	1114
219 -----	111	1112 -----	1121
Ch. 3: Bases of criminal liability:		1113 -----	1122
Culpability; causation:		1114 -----	1121-22, 1124
301 -----	301	1115 -----	1124
302 -----	302	1116 -----	1125
303 -----	501	1117 -----	Omitted
304 -----	501	1118 -----	1311
305 -----	Omitted	1119 -----	1117, 1311
Ch. 4: Complicity:		1120 -----	1118
401 -----	401	1121 -----	1131
402 -----	402	1122 -----	1127
403 -----	403	1129 -----	Omitted
409 -----	111	Ch. 12: Foreign relations, immigration and nationality, foreign relations, and trade:	
Ch. 5: Responsibility defenses:		1201 -----	1201
Juveniles; intoxication; mental disease or defect:		1202 -----	1202
501 -----		1203 -----	1203
502 -----	503	1204 -----	1211
503 -----	502	1205 -----	1204
Ch. 6: Defenses involving justification and excuse:		1206 -----	1128
601 (omitted in part) -----	104	Immigration, naturalization, and passports:	
602 -----	521	1221 -----	1221
603 -----	522	1222 -----	1222
604 -----	522	1223 -----	1223
605 -----	Omitted	1224 -----	1224
606 -----	523	1225 -----	1225
607 -----	521-24	1229 -----	1226
608 -----	Omitted	Ch. 13: Integrity and effectiveness of Government operations:	
609 -----	532	1301 -----	1302
610 -----	511	1302 -----	1302
619 -----	111, 524	1303 -----	1311
Ch. 7: Temporal and other restraints on prosecution:		1304 -----	1312
701 -----	3281	1305 -----	1313
702 -----	531	1306 -----	1314
703 -----	Omitted	1307 -----	Omitted
704 -----	Omitted	1308 -----	1801
705 -----	Omitted	1309 -----	1315
706 -----	Omitted	1310 -----	1316
707 -----	Omitted		
708 -----	Omitted		
709 -----	Omitted		

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1321	1322-23	1601	1601
1322	1322-23	1602	1602
1323	1325	1603	1603
1324	1326	1609	1601-03
1325	1328	1611	1613
1326	1327	1612	1612
1327	1323	1613	1615
1341	1331	1614	1616
1342	1332	1615	1618
1343	1333	1616	1614
1344	1335	1617	1723
1345	1336	1618	1617
1346	1003	1619	Omitted
1349	1334	1631	1621
1351	1341	1632	1622
1352	1342-43	1633	1623
1353	1343	1634	1621-23
1354	1344	1635	1625
1355	1346	1639	1624
1356	1343-45	1641	1631
1361	1351	1642	1632
1362	1352	1643	1631
1363	1353	1644	1632
1364 (omitted in part)	1355	1645	1633
1365	1354	1646	1634
1366	1357	1647	1635
1367	1324, 58	1648	Omitted
1368	1351-55, 1357-58	1649	1636
1369	1359	1650	1631-35
1371	Omitted	Ch. 17: Offenses against property:	
1372	1356	1701	1701
1381	1361	1702	1615, 1701-02
Ch. 14: Internal revenue and customs offenses:		1703	Omitted
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1402	1402	1705	1702-03
1403	1411	1706	1701-02
1404	1411	1708	1704
1405	1411	1709	111, 1704
1409	1403	1711	1711
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1501	1501	1714	1713
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1515	1513	1734	1731
1516	Omitted	1735	1731
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1534	1525	1740	1731, 1735
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1772 -----	1761	3103 -----	2103
1773 -----	Omitted	3104 -----	2104
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1801 -----	1801	3106 -----	Omitted
1802 -----	1802	Ch. 32: Imprisonment:	
1803 -----	1803	3201 -----	2301
1804 -----	1804	3202 -----	Omitted
1805 -----	1626	Ch. 32: Imprisonment:	
1811 -----	1811-12	3203 (omitted in part) -----	2204
1812 -----	1811-12	3204 -----	2303
1813 -----	1811-12	3205 -----	2304
1814 -----	1811	Ch. 33: Fines:	
1821 -----	1825	3301 -----	2201
1822 -----	1821-22	3302 -----	2202
1823 -----	1822, 24	3303 -----	2203
1824 -----	1823	3304 -----	2204
1825 -----	1821-23	Ch. 34: Parole:	
1826 -----	1821-24	3401 -----	4202
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1829 -----	111, 1825	3403 -----	4204
1831 -----	1831	3404 -----	4205
1832 -----	1832	3405 -----	4206
1841 -----	1841	3406 -----	4208
1842 (omitted in part) -----	1841	Ch. 35: Disqualification from office and other collateral consequences of conviction:	
1843 -----	Omitted	3501 -----	Omitted
1848 -----	Omitted	3502 -----	Omitted
1849 -----	1636, 1841	3503 -----	Omitted
1851 -----	1851	3504 -----	Omitted
1852 -----	1871	3505 -----	Omitted
1861 -----	1871	Ch. 36: Life imprisonment:	
Ch. 30: General sentencing provisions:		3601 -----	Omitted
3001 -----	2001	Ch. 36: Provisional: Sentence of death or life imprisonment:	
3002 -----	105	3601 -----	2401
3003 -----	Omitted	3602 -----	2402
3004 -----	2003	3603 -----	2401
3005 -----	Omitted	3604 -----	2401
3006 -----	2002	Appellate Review of Sentence:	
3007 -----	2004	Title 28:	
		1291 -----	Omitted

93d CONGRESS
1st Session

S. 1400

IN THE SENATE OF THE UNITED STATES

MARCH 27, 1973

Mr. HRUSKA (for himself and Mr. McCLELLAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform, revise, and codify the substantive criminal law of the United States; to make conforming amendments to title 18 and other titles of the United States Code; and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the*
2 *United States of America in Congress assembled,* That this Act may
3 be cited as the "Criminal Code Reform Act of 1973".

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7 **PRINCIPLES**

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2 **TITLE III.—GENERAL PROVISIONS**

3 SEC. 2. (a) Parts II, III, IV, and V of title 18, United States Code,
4 are renumbered as parts IV, V, VI, and VII, respectively.

5 (b) The analysis of title 18, United States Code, preceding Part I
6 of title 18, is amended to read as follows:

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"403. JUVENILE DELINQUENCY.....	5031
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4 **"PART VII.—IMMUNITY OF WITNESSES"**

5 **TITLE I.—REFORM OF FEDERAL CRIMINAL CODE**

6 Sec. 101. Title 18 of the United States Code is amended by deleting
 7 Part I and inserting in lieu thereof the following which may be
 8 cited as the "Federal Criminal Code":

9 **"PART I.—GENERAL PROVISIONS AND** 10 **PRINCIPLES**

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11 **"Chapter 1.—GENERAL PROVISIONS**

"Sec.
"101. Application.
"102. General Purposes.
"103. Construction.
"104. Civil Remedies and Powers.
"105. Classification of Offenses.
"111. General Definitions.

12 **"§ 101. Application**

13 "Except as otherwise provided, this title applies to prosecutions
 14 under any Act of Congress other than:

15 "(a) an Act of Congress applicable exclusively to the District
 16 of Columbia;

1 “(b) the Canal Zone Code; or

2 “(c) the Uniform Code of Military Justice (10 U.S.C. 801
3 et seq.).

4 **“§ 102. General Purposes**

5 “The general purposes of this title are:

6 “(a) to define conduct which indefensibly causes or threatens
7 harm to those individual or public interests for which federal
8 protection is appropriate;

9 “(b) to prescribe sanctions for engaging in such conduct which
10 will:

11 “(1) assure just punishment for such conduct;

12 “(2) deter such conduct;

13 “(3) protect the public from persons who engage in such
14 conduct; and

15 “(4) promote the correction and rehabilitation of persons
16 who engage in such conduct; and

17 “(c) to establish a system of fair and expeditious procedures
18 for investigating the commission of such conduct, for determining
19 the guilt or innocence of persons charged with engaging in such
20 conduct, and for imposing appropriate sanctions upon persons
21 found guilty of such conduct.

22 **“§ 103. Construction**

23 “(a) **IN GENERAL.**—The provisions of this title shall be construed
24 to give effect to the fair import of the language employed and to the
25 intent of the Congress. Except to the extent necessary to assure fair
26 notice of the conduct constituting an offense, the rule of strict con-
27 struction does not apply to this title.

28 “(b) **TITLES AND HEADINGS.**—A title or heading shall not be con-
29 strued as limiting the scope or application of the language of the
30 chapter or section in which it appears or to which it refers.

31 “(c) **NAMES OF OFFENSES.**—A term commonly employed generically
32 to refer to a kind of offense or a group of offenses, which is also em-
33 ployed as a title of a section defining an offense, shall be construed
34 in its generic sense when used outside such section without reference
35 to the number thereof.

36 **“§ 104. Civil Remedies and Powers Unimpaired**

37 “Nothing in this title affects the availability of any civil remedy
38 or the power of a court, by civil contempt proceedings, to compel
39 compliance with its order, decree, process, writ, or rule, or to com-

1 pensate a complainant for loss sustained by reason of disobedience or
2 resistance thereto.

3 **“§ 105. Classification of Offenses**

4 “**(a) CLASSIFICATIONS.**—Offenses are classified for the purpose of
5 sentencing into :

6 “(1) felonies which are subclassified into :

7 “(A) Class A felonies ;

8 “(B) Class B felonies ;

9 “(C) Class C felonies ;

10 “(D) Class D felonies ; and

11 “(E) Class E felonies ;

12 “(2) misdemeanors, which are subclassified into :

13 “(A) Class A misdemeanors ;

14 “(B) Class B misdemeanors ; and

15 “(C) Class C misdemeanors ; and

16 “(3) infractions, which are not subclassified.

17 “**(b) EFFECTS OF CLASSIFICATION.**—The effects of each classification
18 of offenses are set forth in chapters 21 through 24.

19 **“§ 111. General Definitions**

20 “As used in this title, unless otherwise provided or unless a different
21 meaning is plainly required :

22 “‘affirmative defense’ means a defense concerning which the de-
23 fendant has the burden of proof by a preponderance of the
24 evidence ;

25 “‘agent’ means a partner, director, officer, representative, serv-
26 ant, employee, or other person authorized to act on behalf of
27 another person ;

28 “‘aircraft’ includes any craft designed for navigation in air or
29 in space ;

30 “‘ammunition’ includes ammunition or cartridge cases, primers,
31 bullets, or propellant powder designed for use in a firearm ;

32 “‘anything of pecuniary value’ means anything of value in the
33 form of money, a negotiable instrument, a commercial interest, or
34 anything else the primary significance of which is economic
35 advantage, or any other property or service which has a value in
36 excess of \$100 ;

37 “‘anything of value’ means any direct or indirect gain or advan-
38 tage, or anything which might reasonably be regarded by the bene-
39 ficiary as a direct or indirect gain or advantage, including a direct
40 or indirect gain or advantage to any other person ;

1 “‘associate nation’ means a nation at war with a foreign power
2 with which the United States is at war;

3 “‘bodily injury’ includes a cut, abrasion, bruise, burn, or dis-
4 figurement; physical pain; illness; impairment of the function of
5 a bodily member, organ, or mental faculty; and any other injury
6 to the body no matter how temporary;

7 “‘Canal Zone’ includes the area designated as the Canal Zone
8 by sections 1 and 2 of title 2 of the Canal Zone Code, and also in-
9 cludes the corridor over which the United States exercises jurisdic-
10 tion pursuant to the provisions of Article IX of the General Treaty
11 of Friendship and Cooperation between the United States of
12 America and the Republic of Panama, signed March 2, 1936, to
13 the extent that the application to the corridor of the provisions
14 of this title is consistent with the nature of the rights of the United
15 States in the corridor as provided by treaty;

16 “‘chapter’ means a chapter of this title;

17 “‘conduct’ includes any act, any omission, and any possession;

18 “‘court of the United States’ means any of the following courts:
19 the Supreme Court of the United States, a United States Court
20 of Appeals, a United States District Court established under
21 28 U.S.C. 132, the United States District Court for the District
22 of the Canal Zone, the District Court of Guam, the District Court
23 of the Virgin Islands, the United States Court of Claims, the
24 United States Court of Customs and Patent Appeals, the Tax
25 Court of the United States, the United States Customs Court, and
26 the United States Court of Military Appeals;

27 “‘crime’ means a felony or a misdemeanor, but not an
28 infraction;

29 “‘crime of violence’ means (1) a crime which has as an element
30 the use, attempted use, or threatened use of physical force against
31 the person or property of another, and (2) any other crime which
32 is punishable by imprisonment for more than one year and which,
33 by its nature, involves a substantial danger that such physical
34 force may be used in the course of committing the crime;

35 “‘dangerous weapon’ means a weapon, device, instrument, mate-
36 rial, or substance, whether animate or inanimate, which in the
37 manner it is used or intended to be used is capable of producing
38 death or serious bodily injury;

39 “‘destructive device’ means an explosive, an incendiary mate-
40 rial, or a poison gas, in any usable form, and includes a bomb,

1 grenade, mine, rocket, missile, or similar device containing an
2 explosive, an incendiary material, or a poison gas;

3 “‘dwelling’ means a structure, whether or not movable or tem-
4 porary, which is designed for use, or used, in whole or in part,
5 as a person’s home or place of lodging;

6 “‘elements of the offense’ means (1) the conduct, (2) the culp-
7 ability, (3) any surrounding circumstances, and (4) any result,
8 which are specified by the section describing the offense;

9 “‘explosive’ means any chemical compound, mechanical mix-
10 ture, or other combination of materials in such proportions,
11 quantities, or packing that ignition by fire, by friction, by con-
12 cussion, by percussion, or by detonation of the compound, mix-
13 ture, or combination, or a part thereof, may cause an explosion;

14 “‘felony’ means an offense for which a term of imprisonment of
15 more than one year is authorized by a federal statute, or would be
16 if a circumstance giving rise to federal jurisdiction existed, or, if
17 qualified by the word ‘state’ or ‘local’, an offense for which such a
18 term is authorized by such state or local law;

19 “‘finance’ includes providing indirect financing;

20 “‘firearm’ means a weapon which will expel, or which is readily
21 capable of expelling, or which may readily be converted to expel
22 a projectile by the action of an explosive, and includes such a
23 weapon, loaded or unloaded, commonly referred to as a gun, pis-
24 tol, revolver, rifle, shotgun, machine gun, bazooka, or cannon;

25 “‘foreign commerce’ means commerce between a state and a
26 foreign country, or from a state to a foreign country, or from a
27 foreign country to a state;

28 “‘foreign dignitary’ means a chief of state or head of govern-
29 ment or the political equivalent, ambassador, foreign minister, or
30 other officer of cabinet rank or above of a foreign power, or the
31 chief executive officer of an international organization, or person
32 who has previously served in any such capacity;

33 “‘foreign official’ means (1) a foreign dignitary, and (2) a per-
34 son of foreign nationality who is duly notified to the United States
35 as an officer or employee of a foreign government or international
36 organization;

37 “‘foreign power’ includes a foreign government, faction, party
38 or military force, or persons purporting to act as such, whether
39 or not recognized by the United States, and any international
40 organization;

1 “‘found guilty’ includes acceptance by a court of a plea of guilty
2 or nolo contendere ;

3 “‘government’ means (1) the government of a nation or state or
4 a political unit thereof, (2) an agency, subdivision, or department
5 of the foregoing, including the executive, legislative, and judicial
6 branches, (3) a corporation or other legal entity or association
7 organized by a government for the execution of a government pro-
8 gram and subject to control by a government, or (4) a corporation
9 or agency established pursuant to interstate compact or interna-
10 tional treaty between or among governments for the execution of
11 an intergovernmental program ;

12 “‘government agency’ includes a department, independent es-
13 tablishment, commission, administration, authority, board, or bu-
14 reau of the executive, legislative, judicial, or other branch of a
15 government, and a corporation in which a government has a pro-
16 prietary interest ;

17 “‘high seas’ means all parts of the sea that are not included
18 in the territorial sea or in the internal waters of a nation or
19 government ;

20 “‘human being’ does not include an individual who has not been
21 born or who has died ;

22 “‘immediate family’ of a designated individual means (1) his
23 spouse, parent, brother, sister, child, or a person to whom he stands
24 in loco parentis, or (2) any other person living in his household
25 and related to him by blood or marriage ;

26 “‘includes’ is to be read as if the phrase ‘but is not limited to’
27 were also set forth ;

28 “‘infraction’ means an offense for which a term of imprison-
29 ment of five days or less is authorized by a federal statute, or would
30 be if a circumstance giving rise to federal jurisdiction existed, or,
31 if qualified by the word ‘state’ or ‘local’, an offense for which such
32 a term is authorized by such state or local law ;

33 “‘intentionally’ and variants thereof have the meaning pre-
34 scribed in section 302 (a) ;

35 “‘international organization’ means a public international
36 organization designated as such pursuant to section 1 of the Inter-
37 national Organization Immunities Act (22 U.S.C. 288) ;

38 “‘interstate commerce’ means commerce between one state and
39 another state or from one state to another state ;

40 “‘judge’ means any judicial officer, including a justice of the

1 Supreme Court and a magistrate;

2 “‘juror’ means a grand juror or a petit juror and includes a per-
3 son who has been selected or summoned to attend as a prospective
4 juror;

5 “‘knowingly’ and variants thereof have the meaning prescribed
6 in section 302(b) ;

7 “‘law enforcement officer’ means a public servant authorized by
8 law or by a government agency to conduct or engage in the pre-
9 vention, investigation, or prosecution of any offense ;

10 “‘local’ means of or pertaining to any political unit within a
11 state ;

12 “‘mail’ includes a post card, letter, envelope, parcel, package,
13 newspaper, magazine, circular, advertising matter, or mailbag, or
14 anything contained therein (1) which is under the care, custody,
15 or control of the United States Postal Service ; (2) which has been
16 left in or adjacent to any authorized depository for mail matter ; or
17 (3) which, having been under the care, custody, or control of the
18 United States Postal Service, has not been delivered to the person
19 to whom it was directed ;

20 “‘military’ means relating to the armed forces or their support-
21 ing agencies, whether land, sea, or air, in either an offensive or
22 defensive capacity ;

23 “‘misdemeanor’ means an offense for which a term of imprison-
24 ment of one year or less, but more than five days, is authorized by
25 a federal statute, or would be if a circumstance giving rise to fed-
26 eral jurisdiction existed, or, if qualified by the word ‘state’ or
27 ‘local’, an offense for which such a term is authorized by such state
28 or local law ;

29 “‘motor vehicle’ means a self-propelled vehicle designed for
30 running on land but not on rails ;

31 “‘national credit institution’ means (1) a bank the deposits of
32 which are insured by the Federal Deposit Insurance Corporation ;
33 (2) a member, as defined in section 2 of the Federal Home Loan
34 Bank Act, as amended (12 U.S.C. 1422), of the Federal home loan
35 bank system, and any Federal home loan bank ; (3) an institution
36 the accounts of which are insured by the Federal Savings and Loan
37 Insurance Corporation ; (4) a credit union the accounts of which
38 are insured by the Administrator of the National Credit Union
39 Act, as amended (12 U.S.C. 1751 et seq.) ; or (5) a bank, banking
40 association, land bank, intermediate credit bank, bank for coopera-
41 tives, production credit association, land bank association, mort-

1 gage association, trust company, savings bank, or other banking
2 or financial institution organized or operating under the laws of
3 the United States;

4 “‘national defense emergency’ means an emergency that the
5 President or the Congress declares to exist and declares to be a
6 national defense emergency by reason of actual or threatened war,
7 invasion, or disturbance of the international relations of the
8 United States;

9 “‘negligently’ and variants thereof have the meaning prescribed
10 in section 302(d) ;

11 “‘offense’ means conduct for which a term of imprisonment or a
12 fine is authorized by a federal statute, or would be if a circumstance
13 giving rise to federal jurisdiction existed, or, if qualified by the
14 word ‘state’ or ‘local’, an offense for which a term of imprisonment
15 or a fine is authorized by such state or local law ;

16 “‘official action’ means a decision, opinion, recommendation,
17 judgment, vote, or other conduct involving an exercise of discre-
18 tion by a public servant in the course of his employment ;

19 “‘official detention’ means arrest, custody following surrender in
20 lieu of arrest, detention in any facility for custody of a person
21 under a charge or conviction of an offense or alleged or found to
22 be a juvenile delinquent, detention of a material witness, detention
23 under a law authorizing civil commitment in lieu of criminal
24 proceedings or authorizing such detention while criminal proceed-
25 ings are held in abeyance, detention for extradition or deportation
26 or exclusion, or custody for purposes incident to the foregoing,
27 including transportation, medical diagnosis or treatment, court
28 appearances, work, and recreation ; ‘official detention’ does not
29 include (1) supervision on probation or parole ; (2) restrictions
30 after release due to conditions imposed pursuant to chapter 207,
31 other than custody after specified hours of release ; or (3) restric-
32 tions after release due to conditions imposed on a juvenile delin-
33 quent pursuant to section 5035 other than custody after specified
34 hours of release ;

35 “‘official guest of the United States’ means a citizen or national
36 of a foreign country present in the United States as an official guest
37 of the United States pursuant to designation as such by the
38 Secretary of State ;

39 “‘official proceeding’ means a proceeding, or a portion thereof,
40 which is or may be heard before any government agency or any

1 public servant who is authorized to take oaths, including a
2 magistrate, referee, hearing examiner, administrative law judge,
3 or notary ;

4 “ ‘omission’ means a failure to perform an act which there is a
5 legal duty to perform ;

6 “ ‘organization’ means a legal entity, including a corporation,
7 company, association, firm, partnership, joint stock company,
8 foundation, institution, society, union, club, church, and any other
9 group of persons organized for any purpose but does not include
10 an entity organized as or by a government agency for the execution
11 of a government program ;

12 “ ‘paragraph’ means a paragraph of the subsection in which
13 the term is used ;

14 “ ‘person’ means a human being or an organization ;

15 “ ‘President or a successor to the presidency’ means the Presi-
16 dent of the United States, the President-elect, the Vice President
17 or, if there is no Vice President, the officer next in order of succes-
18 sion to the office of the President of the United States, the Vice
19 President-elect, or any person who is acting as President under
20 the Constitution and laws of the United States ;

21 “ ‘President-elect’ and ‘Vice President-elect’ mean such persons
22 as are the apparent successful candidates for those offices, as as-
23 certained from the results of the general elections held to deter-
24 mine the electors of President and Vice President in accordance
25 with 3 U.S.C. 1 and 2 ;

26 “ ‘property’ means any money ; tangible or intangible personal
27 property ; property, whether real or personal, the location of
28 which can be changed (including things growing on, affixed to,
29 or found in land, and documents representing rights to property,
30 although the rights represented thereby have no physical loca-
31 tion) ; real property, the location of which cannot be changed, if
32 the offense involves transfer or attempted transfer of an interest
33 in the property ; intellectual property or information, by what-
34 ever means preserved, although only the means by which it is
35 preserved have a physical location ; contract right ; chose-in-ac-
36 tion ; interest in or claim to wealth ; credit ; or any other article or
37 anything of value, including services ;

38 “ ‘property of another’ means property in which a person or gov-
39 ernment has an interest which the actor is not privileged to in-
40 fringe without consent, whether or not the actor also has an inter-
41 est in the property ;

1 “‘public servant’ means an officer, employee, adviser, consultant,
2 juror, or other person authorized to act for or on behalf of a
3 government or serving the government or any branch, department,
4 or agency thereof, and includes a person who has been elected,
5 nominated, or appointed to be a public servant; a federal ‘public
6 servant’ includes a United States official, but does not include a
7 District of Columbia public servant;

8 “‘railroad vehicle’ means a railroad locomotive or car;

9 “‘recklessly’ and variants thereof have the meaning prescribed
10 in section 302(c);

11 “‘section’ means a section within a chapter of this title;

12 “‘services’ includes labor; professional services; transporta-
13 tion; telephone, mail, and other public services; gas, electricity,
14 and other utility services; accommodations in hotels, restaurants,
15 or elsewhere; admissions to exhibitions; and use of vehicles or
16 other property;

17 “‘state’ means a state of the United States, Puerto Rico, the
18 Canal Zone, the District of Columbia, American Samoa, Guam,
19 the Virgin Islands, Johnston Island, Midway Island, Wake Is-
20 land, and Kingman’s Reef, and any other territory or posses-
21 sion of the United States;

22 “‘stolen property’ means property which has been the subject
23 of any wrongful taking, including theft, executing a scheme to
24 defraud, robbery, extortion, criminal coercion, or burglary, as
25 those offenses are described in this title;

26 “‘subsection’ means a subsection of the section in which the
27 term is used;

28 “‘this title’ means title 18 of the United States Code;

29 “‘traffic’ means to buy, sell, transfer, distribute, dispense, im-
30 port, or export, or to possess with intent to do any of the fore-
31 going;

32 “‘United States’, when used in a territorial sense, includes all
33 states and all places and waters, continental or insular, and the
34 overlying airspace, subject to the jurisdiction of the United
35 States;

36 “‘United States’, when used in other than a territorial sense,
37 means government of the United States;

38 “‘United States official’ means the President, the President-
39 elect, the Vice President, the Vice President-elect, a member of

1 Congress, a member-elect of Congress, a justice of the Supreme
2 Court, or a cabinet member;

3 “‘value’, when stated in monetary terms, means the aggregate
4 value in terms of face, par, or market value, cost, or wholesale
5 or retail price, whichever is greatest;

6 “‘vehicle’ means a motor vehicle, railroad vehicle, vessel, or
7 aircraft;

8 “‘vessel’ means a self-propelled or wind-propelled craft de-
9 signed for navigation on or under water;

10 “‘violate’ means to engage in conduct which is proscribed, pro-
11 hibited, declared unlawful, or made subject to a penalty.

12 **“Chapter 2.—FEDERAL CRIMINAL**
13 **JURISDICTION**

“Sec.

“201. Federal Jurisdiction.

“202. General Jurisdiction of the United States.

“203. Special Jurisdiction of the United States.

“204. Extraterritorial Jurisdiction of the United States.

“205. Federal Jurisdiction Not Preemptive.

“211. Annual Reports on Exercise of Federal Jurisdiction.

14 **“§ 201. Federal Jurisdiction**

15 “There is federal jurisdiction over an offense described in this title
16 if the offense is committed within:

17 “(a) the general jurisdiction of the United States, as set forth
18 in section 202;

19 “(b) the special jurisdiction of the United States, as set forth
20 in section 203; or

21 “(c) the extraterritorial jurisdiction of the United States, as set
22 forth in section 204.

23 **“§ 202. General Jurisdiction of the United States**

24 “(a) **IN GENERAL.**—Except as otherwise provided in this section,
25 there is federal jurisdiction over an offense described in this title if the
26 offense is committed within the United States.

27 “(b) **WHERE A JURISDICTIONAL BASE IS SPECIFIED.**—Where, in a
28 separate subsection of a section describing an offense, one or more
29 particular circumstances are specified as giving rise to federal juris-
30 diction over the offense, federal jurisdiction over the offense is limited
31 to cases in which one of such circumstances exists or has occurred.
32 Federal jurisdiction may be alleged as resting on more than one of such
33 circumstances but proof of any one of such circumstances is sufficient.
34 Proof of more than one of such circumstances does not increase the
35 number of offenses.

1 “(c) WHERE NO JURISDICTIONAL BASE IS SPECIFIED.—Where, in a
2 section describing an offense, there is no separate subsection in which
3 particular circumstances are specified as giving rise to federal juris-
4 diction over the offense, federal jurisdiction over the offense is not
5 limited.

6 **“§ 203. Special Jurisdiction of the United States**

7 “(a) IN GENERAL.—Except as otherwise provided, there is federal
8 jurisdiction over an offense described in this title committed within the
9 special jurisdiction of the United States, or any part of such juris-
10 diction, to the extent specified by the section in which the offense is
11 described. The special jurisdiction of the United States includes the
12 special territorial jurisdiction, the special maritime jurisdiction, and
13 the special aircraft jurisdiction of the United States, as provided in
14 subsections (b), (c), and (d).

15 “(b) SPECIAL TERRITORIAL JURISDICTION.—The special territorial
16 jurisdiction of the United States includes:

17 “(1) any lands reserved or acquired for the use of the United
18 States which are under the exclusive or concurrent jurisdiction
19 thereof, and any place purchased or otherwise acquired by the
20 United States by consent of the legislature of the state in which
21 it is located for the erection of any building or other structure;

22 “(2) any unorganized territory or possession of the United
23 States;

24 “(3) the Indian country, which includes:

25 “(A) all land within the limits of any Indian reservation
26 under the jurisdiction of the United States, notwithstanding
27 the issuance of any patent, and including any right-of-way
28 running through a reservation;

29 “(B) all dependent Indian communities within the borders
30 of the United States, whether within the original or sub-
31 sequently acquired territory thereof, and whether within or
32 without a state;

33 “(C) all Indian allotments, the Indian titles to which have
34 not been extinguished, including any right-of-way running
35 through such an allotment; and

36 “(D) all land outside the limits of any Indian reservation,
37 the title to which is held in trust by the United States for any
38 Indian tribe, band, community, group, or pueblo
39 except to the extent that a state has exclusive criminal jurisdiction
40 thereover as provided in title 25 or to the extent that the local

1 tribe, band, community, group, or pueblo has tried an offense com-
2 mitted therein by an Indian; and

3 “(4) any island, rock, or key containing deposits of guano
4 which may, at the discretion of the President, be considered as
5 appertaining to the United States.

6 “(c) SPECIAL MARITIME JURISDICTION.—The special maritime juris-
7 diction of the United States includes:

8 “(1) the high seas;

9 “(2) any other waters within the admiralty and maritime juris-
10 diction of the United States and out of the jurisdiction of any
11 particular state;

12 “(3) a vessel within the admiralty and maritime jurisdiction of
13 the United States, and out of the jurisdiction of any particular
14 state, which belongs in whole or in part to:

15 “(A) the United States;

16 “(B) a state or local government;

17 “(C) a citizen of the United States; or

18 “(D) a corporation created by or under the laws of the
19 United States or any state; and

20 “(4) a vessel registered, licensed, or enrolled under the laws of
21 the United States, which is upon the waters of any of the Great
22 Lakes or the waters connecting them, or upon the Saint Lawrence
23 River where it constitutes the International Boundary Line.

24 “(d) SPECIAL AIRCRAFT JURISDICTION.—The special aircraft juris-
25 diction of the United States includes:

26 “(1) an aircraft which belongs in whole or in part to:

27 “(A) the United States;

28 “(B) a state or local government;

29 “(C) a citizen of the United States; or

30 “(D) a corporation created by or under the laws of the
31 United States or any State;

32 “(2) a civil aircraft of the United States as defined in section
33 101 of the Federal Aviation Act of 1958, as amended (49 U.S.C.
34 1301);

35 “(3) a public aircraft of the United States as defined in section
36 101 of the Federal Aviation Act of 1958, as amended (49 U.S.C.
37 1301);

38 “(4) any other aircraft within the United States;

39 “(5) any other aircraft outside the United States:

1 “(A) which has its next scheduled destination or last point
2 of departure in the United States, if that aircraft next lands
3 in the United States; or

4 “(B) which has an ‘offense’, as defined in the Convention
5 for the Suppression of Unlawful Seizure of Aircraft, com-
6 mitted aboard, if that aircraft lands in the United States with
7 the alleged offender still aboard; and

8 “(6) any other aircraft leased without crew to a lessee who
9 has his principal place of business in the United States, or, if the
10 lessee has no principal place of business, who has his permanent
11 residence in the United States

12 during the period that such aircraft is in flight, which, for the purpose
13 of this subsection, is from the moment when all the external doors of
14 such aircraft are closed following embarkation until the moment when
15 any such door is opened for disembarkation, or, in the case of a forced
16 landing, until the competent authorities take over the responsibility
17 for the aircraft and for the persons and property aboard.

18 **“§ 204. Extraterritorial Jurisdiction of the United States**

19 “Except as otherwise expressly provided by statute, treaty or execu-
20 tive agreement, the circumstances in which the United States has
21 extraterritorial jurisdiction over an offense described in this title in-
22 clude the following:

23 “(a) the offense is a crime of violence and the victim or intended
24 victim is a United States official, or a federal public servant
25 outside the United States for the purpose of performing diplomati-
26 c duties;

27 “(b) the offense is treason, sabotage against the United States,
28 espionage, disclosing or mishandling national defense informa-
29 tion, or disclosing or unlawfully obtaining classified information;

30 “(c) the offense consists of a counterfeiting or forgery of, or
31 uttering of counterfeits or forged copies of, or issuing without au-
32 thority, seals, currency, instruments of credits, stamps, passports,
33 or public documents which are or which purport to be issued by
34 the United States; perjury or false swearing in an official proceed-
35 ing of the United States; making a false statement in a United
36 States government matter or a United States government record;
37 bribery or graft involving a public servant of the United States;
38 other fraud against the United States or theft of property in
39 which the United States has an interest; impersonation of a public

1 servant of the United States; or, if committed by a national or
2 resident of the United States, any other obstruction of or inter-
3 ference with a United States government function;

4 “(d) the offense involves the manufacture or distribution of
5 narcotics or other drugs for import into the United States;

6 “(e) the offense involves entry of persons or property into the
7 United States;

8 “(f) the offense is committed in whole or in part within the
9 United States and the accused participates outside the United
10 States, or the offense constitutes an attempt, conspiracy, or solici-
11 tation to commit an offense within the United States;

12 “(g) the offense is committed by a federal public servant who
13 is outside the United States because of his official duties or by a
14 member of his household residing abroad, or by a person accom-
15 panying the military forces of the United States;

16 “(h) the offense is committed by or against a national of the
17 United States outside the jurisdiction of any nation; or

18 “(i) the offense is comprehended by the generic terms of, and
19 is committed under circumstances specified by, an international
20 treaty or convention adhered to and ratified by the United States
21 which provides for, or requires the United States to provide for,
22 such jurisdiction.

23 **“§ 205. Federal Jurisdiction Not Preemptive**

24 “The existence of federal jurisdiction over an offense does not, in
25 itself, prevent:

26 “(a) a state or local government from exercising its juris-
27 diction to enforce its laws applicable to the conduct involved;

28 “(b) an Indian tribe, band, community, group, or pueblo from
29 exercising its jurisdiction in Indian country to enforce its laws
30 applicable to the conduct involved; or .

31 “(c) a court-martial, military commission, provost court, or
32 other military tribunal from exercising its jurisdiction to enforce
33 the law applicable to the conduct involved pursuant to a federal
34 statute or the law of war.

35 **“§ 211. Annual Reports on Exercise of Federal Jurisdiction**

36 “At the conclusion of each fiscal year the Attorney General shall
37 transmit to the Congress a report of the total number of prosecutions
38 commenced during the preceding fiscal year under each section of this
39 title, identifying the number of such prosecutions commenced under
40 each federal jurisdictional base applicable to each such section.

“Chapter 3.—CULPABILITY

“Sec.

“301. Basis of Liability : Conduct and Culpability.

“302. Kinds of Culpability Defined.

“303. Application of Culpability Requirements.

“§ 301. Basis of Liability : Conduct and Culpability

“A person commits an offense under this title only if :

“(a) he engages in conduct described in a section of this title which provides that such conduct is an offense ; and

“(b) except as otherwise provided in the definition of the offense and in section 303, he engages in such conduct intentionally, knowingly, recklessly, or negligently.

“§ 302. Kinds of Culpability Defined

“The following definitions apply to an offense described in a section of this title and to an offense outside this title which is described in a statute enacted after the effective date of this title.

“(a) **INTENTIONALLY.**—A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

“(b) **KNOWINGLY.**—A person acts knowingly, or with knowledge, with respect to his conduct when he is aware of the nature of his conduct. A person acts knowingly, or with knowledge, with respect to circumstances surrounding his conduct when he is aware or believes that the circumstances exist, or is aware of a high probability of their existence, or intentionally avoids knowledge as to their existence. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware or believes that his conduct is substantially certain to cause the result.

“(c) **RECKLESSLY.**—A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or a result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of conduct that an ordinary person would exercise under all the circumstances.

“(d) **NEGLIGENTLY.**—A person acts negligently, or is negligent, with respect to circumstances surrounding his conduct or a result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes

1 a gross deviation from the standard of care that an ordinary person
2 would exercise under all circumstances.

3 **“§ 303. Application of Culpability Requirements**

4 “The following provisions apply to an offense described in a section
5 of this title and to an offense outside this title which is described in a
6 statute enacted after the effective date of this title.

7 “(a) **WHERE CULPABILITY NOT SPECIFIED.**—Where a felony or a mis-
8 demeanor is described without specifying any culpability and without
9 providing explicitly that a person may be guilty without culpability,
10 the culpability requirement is satisfied by establishing that the person
11 acted either intentionally, knowingly, or recklessly. When an infrac-
12 tion is described without specifying any culpability, no culpability
13 is required.

14 “(b) **WHERE CULPABILITY PARTIALLY SPECIFIED.**—Unless a contrary
15 purpose plainly appears, where culpability is required, that kind of
16 culpability is required with respect to (1) the conduct (2) any result,
17 and (3) any surrounding circumstances, which are specified in the
18 description of the offense, except that where the culpability is ‘in-
19 tentionally’ the culpability required as to surrounding circumstances
20 is ‘knowingly’.

21 “(c) **CULPABILITY AS TO EXISTENCE OF OFFENSE.**—Except as other-
22 wise expressly provided, knowledge or other culpability is not re-
23 quired as to the fact that conduct is an offense or as to the existence,
24 meaning, or application of the law determining the elements of an
25 offense.

26 “(d) **CULPABILITY AS TO JURISDICTION, VENUE, AND GRADING FAC-**
27 **TORS.**—Except as otherwise expressly provided, culpability is not re-
28 quired with respect to any factor which is solely a basis for federal
29 jurisdiction, for venue, or for grading.

30 “(e) **CULPABILITY AS TO FACTORS SPECIFIED AS EXISTING ‘IN FACT’.**—
31 Culpability is not required with respect to any factor specified in the
32 description of the offense as existing ‘in fact’.

33 “(f) **SPECIFIED CULPABILITY REQUIREMENT BY GREATER CULPABIL-**
34 **ITY.**—Where negligence suffices to establish culpability as to an ele-
35 ment of an offense, the required culpability exists if a person acts in-
36 tentionally, knowingly, or recklessly. Where recklessness suffices to
37 establish culpability as to an element of an offense, the required culpa-
38 bility exists if a person acts intentionally or knowingly. Where
39 knowledge suffices to establish culpability as to an element of an
40 offense, the required culpability exists if a person acts intentionally.

"Chapter 4.—COMPLICITY

"Sec.

"401. Liability of Accomplice.

"402. Liability of Organization for Conduct of an Agent.

"403. Liability of Agent for Conduct of an Organization.

"§ 401. Liability of Accomplice

"(a) **LIABILITY.**—A person is guilty of an offense based upon the conduct of another and may be charged and punished as a principal if:

"(1) he knowingly aids, abets, counsels, commands, induces, procures, or facilitates its commission or attempted commission;

"(2) acting with the kind of culpability required for the offense charged, he causes an innocent, incompetent, or irresponsible person to engage in conduct which if performed by the defendant or another would be an offense; or

"(3) he is co-conspirator and the offense charged was committed in furtherance of the conspiracy and was a necessary or reasonably foreseeable consequence of it.

"(b) **DEFENSES PRECLUDED.**—In any prosecution in which liability of the defendant is based upon subsection (a), it is not a defense that:

"(1) the defendant does not belong to the class of persons who by definition are the only persons capable of committing the offense directly; or

"(2) the person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, or was incompetent or irresponsible, or is immune from prosecution or otherwise not subject to prosecution.

"§ 402. Liability of Organization for Conduct of Agent

"(a) **LIABILITY.**—An organization is guilty of an offense if:

"(1) the conduct constituting the offense, in whole or in part, is the conduct of its agent, and such conduct:

"(A) occurs in the performance of matters within the scope of the agent's employment or within the scope of the agent's actual, implied, or apparent authority;

"(B) relates to the performance of matters for which the organization gave the agent responsibility, and is intended by the agent to benefit the organization;

"(C) is thereafter ratified or adopted by the organization;
or

1 “(D) involves or relates to a nondelegable duty of the or-
2 ganization, and the organization is otherwise legally account-
3 able for the offense; or

4 “(2) the offense involves a failure to discharge a specific duty
5 of affirmative conduct imposed on the organization by law.

6 “(b) DEFENSES PRECLUDED.—In any prosecution in which liability
7 of the organization is based upon subsection (a), it is not a defense
8 that:

9 “(1) the organization does not belong to the class of persons
10 who by definition are the only persons capable of committing
11 the offense directly; or

12 “(2) the person for whose conduct the organization is being
13 held liable has been acquitted, has not been prosecuted or con-
14 victed, has been convicted of a different offense, or was incompetent
15 or irresponsible, or is immune from prosecution or otherwise not
16 subject to prosecution.

17 **“§ 403. Liability of Agent for Conduct of Organization**

18 “(a) LIABILITY.—

19 “(1) Act on Behalf of Organization. A person is guilty of an
20 offense which is based upon an act he performs or causes to be
21 performed in the name of an organization or in its behalf to the
22 same extent as if the conduct were performed in his own name or
23 behalf.

24 “(2) Omission to Perform Duty of Organization. Except as
25 otherwise expressly provided, whenever a duty to act is imposed
26 upon an organization by a statute or by a regulation, rule, or order
27 issued pursuant thereto, any agent of the organization having
28 primary responsibility for the subject matter of the duty is
29 guilty of an offense which is based upon an omission to perform
30 the duty to the same extent as if the duty were imposed upon him
31 directly.

32 “(3) Reckless Default in Supervising Conduct of Organiza-
33 tion. A person responsible for supervising particular activities
34 who, by his reckless default in supervising those activities, permits
35 or contributes to the occurrence of an offense by the organization,
36 is guilty of an offense of the same class as the offense for which the
37 organization may be convicted, except that if the latter offense is a
38 felony the offense under this subsection is a Class A misdemeanor.

39 “(b) DEFENSES PRECLUDED.—In any prosecution in which liability of
40 the agent is based upon subsection (a), it is not a defense that:

1 “(1) the agent does not belong to the class of persons who by
2 definition are the only persons capable of committing the offense
3 directly; or

4 “(2) the organization for whose conduct the agent is being held
5 liable has been acquitted, has not been prosecuted or convicted, has
6 been convicted of a different offense, or is immune from prosecu-
7 tion or otherwise not subject to prosecution.

8 **“Chapter 5.—DEFENSES**

“Sec.

“501. Mistake of Fact or Law.

“502. Insanity.

“503. Intoxication.

“511. Duress.

“521. Public Duty.

“522. Protection of Persons.

“523. Protection of Property.

“524. General Provisions for Sections 521 through 523.

“531. Unlawful Entrapment.

“532. Official Misstatement of Law.

9 **“§ 501. Mistake of Fact or Law**

10 “‘It is a defense to a prosecution under any federal statute that, as a
11 result of ignorance or mistake concerning a matter of fact or law, the
12 defendant lacked the state of mind required as an element of the offense
13 charged. Ignorance or mistake concerning a matter of fact or law does
14 not otherwise constitute a defense, and, except as otherwise expressly
15 provided, mistake as to the existence of facts which would constitute an
16 affirmative defense does not constitute a defense.

17 **“§ 502. Insanity**

18 “‘It is a defense to a prosecution under any federal statute that the
19 defendant, as a result of mental disease or defect, lacked the state of
20 mind required as an element of the offense charged. Mental disease or
21 defect does not otherwise constitute a defense.

22 **“§ 503. Intoxication**

23 “(a) **DEFENSE.**—It is a defense to a prosecution under any federal
24 statute that the defendant, as a result of intoxication, lacked the state
25 of mind required as an element of the offense charged if:

26 “(1) intent or knowledge is the state of mind required; or

27 “(2) his intoxication was not self-induced.

28 Intoxication does not otherwise constitute a defense.

29 “(b) **DEFINITIONS.**—As used in this section:

30 “(1) ‘intoxication’ means a disturbance of a mental or physical
31 capacity resulting from the introduction of alcohol or a drug or
32 other substance into the body;

33 “(2) ‘self-induced’ intoxication means intoxication caused by a

1 substance which the actor knowingly introduces into his body, the
2 tendency of which to cause intoxication he knows or ought to
3 know.

4 **“§ 511. Duress**

5 “(a) **AFFIRMATIVE DEFENSE.**—It is an affirmative defense to a prose-
6 cution under any federal statute that the defendant engaged in the
7 conduct charged because he was coerced by another person to do so by
8 a clear threat of imminent, immediate, and inescapable death or serious
9 bodily injury to himself or a third person, which threat was such as
10 would render a person of reasonable firmness in the position of the
11 defendant incapable of resisting it.

12 “(b) **DEFENSE PRECLUDED.**—It is not a defense under this section if
13 the offense charged is:

14 “(1) an offense described in section 1101 (Treason), 1102
15 (Armed Rebellion or Insurrection), 1121 (Espionage), or 1601
16 (Murder);

17 “(2) any offense, and the defendant intentionally, knowingly,
18 or recklessly entered into a criminal enterprise or placed himself
19 in a situation in which it was foreseeable that he would be sub-
20 jected to duress; or

21 “(3) an offense for which negligence suffices to establish culpa-
22 bility, and the defendant negligently placed himself in a situation
23 in which it was foreseeable that he would be subjected to duress.

24 **“§ 521. Public Duty**

25 “(a) **DEFENSE.**—It is a defense to a prosecution under any federal
26 statute that the defendant reasonably believed that the conduct charged
27 was required or authorized by law:

28 “(1) to carry out his duty as a public servant, or as a person
29 acting at the direction of a public servant; or

30 “(2) to make an arrest or prevent an escape, as a private person,
31 of a person who has committed a felony.

32 “(b) **DEADLY FORCE.**—The use of deadly force is not justified under
33 this section unless:

34 “(1) the defendant’s use of such force would be justified under
35 section 522;

36 “(2) the defendant was a public servant authorized to make
37 arrests, or a person acting at the direction of such a public servant,
38 and reasonably believed that the use of deadly force was necessary
39 to arrest or prevent the escape therefrom of a person who he
40 reasonably believed:

1 “(A) committed or attempted to commit a felony involving
2 a risk of death or serious bodily injury; or

3 “(B) possessed a deadly weapon;

4 “(3) the defendant was a public servant who had custody of a
5 prisoner charged with or convicted of a crime and he reasonably
6 believed that the use of deadly force was necessary to prevent an
7 escape of such prisoner; or

8 “(4) the defendant was a public servant, and the use of deadly
9 force was otherwise authorized by law.

10 **“§ 522. Protection of Persons**

11 “(a) DEFENSE.—It is a defense to a prosecution under this title
12 for an offense involving the use of force against a person that the
13 defendant reasonably believed that the use of such force was neces-
14 sary to protect himself or another person from:

15 “(1) the unprovoked use of unlawful force by such person; or

16 “(2) the use of unlawful force provoked by a mutual combat
17 or affray if:

18 “(A) the defendant withdrew from the encounter and in-
19 dicated to the other person that he had withdrawn, or

20 “(B) the other person unexpectedly resorted to the use of
21 deadly force.

22 “(b) DEADLY FORCE.—The use of deadly force is not justified under
23 this section unless the defendant reasonably believed that the use of
24 such force was necessary to protect himself or another from a risk
25 of death or serious bodily injury. The fact that the defendant could
26 have avoided using deadly force by retreating, with complete safety
27 to himself and others, is a circumstance to be considered with all
28 other circumstances in determining the reasonableness of the defend-
29 ant’s belief in the necessity of using such force.

30 **“§ 523. Protection of Property**

31 “(a) DEFENSE.—It is a defense to a prosecution under this title for
32 an offense involving the use of force against a person that the defendant
33 had custody or possession of real or personal property and reasonably
34 believed that the use of such force was necessary to prevent or termi-
35 nate an unlawful entry or trespass upon such property, or an unlawful
36 taking of or damage to such property, by such person.

37 “(b) DEADLY FORCE.—The use of deadly force is not justified under
38 this section unless:

39 “(1) the defendant’s use of such force would be justified under
40 section 522; or

1 “(2) the defendant reasonably believed that the use of such
2 force was necessary to prevent the destruction of his dwelling.

3 **“§ 524. General Provisions for Sections 521 through 523**

4 “(a) **DEFINITIONS.**—As used in sections 521 through 523:

5 “(1) ‘deadly force’ means force which, in the circumstances
6 used, is likely to cause death or serious bodily injury;

7 “(2) ‘force’ means any physical interference with another
8 person, including restraint;

9 “(3) ‘necessary’ means reasonably required under the circum-
10 stances, as viewed from the standpoint of the defendant;

11 “(4) ‘serious bodily injury’ includes rape and kidnapping;

12 “(5) ‘unlawful force’ means force used against another per-
13 son without his consent, the use of which constitutes an offense
14 under this title.

15 “(b) **EFFECT OF MISTAKE.**—A defense to a prosecution for an offense
16 involving the use of force against a person is available to a defendant
17 under section 521, 522, or 523 even though the defendant was mistaken
18 in his belief that his use of force was necessary, unless his mistake was
19 the result of recklessness or negligence concerning the circumstances
20 surrounding his conduct and he is charged with an offense with respect
21 to which recklessness or negligence, as the case may be, suffices to
22 establish culpability.

23 **“§ 531. Unlawful Entrapment**

24 “‘It is a defense to a prosecution under any federal statute that the
25 defendant was not predisposed to commit the offense charged and did
26 so solely as a result of active inducement by a law enforcement officer
27 or a person acting as an agent of a law enforcement agency. The em-
28 ployment of stratagem or deception, or the provision of a facility or
29 an opportunity for commission of an offense, or the failure to foreclose
30 such an opportunity, or mere solicitation which would not induce an
31 ordinary law-abiding person to commit an offense, does not in itself
32 constitute unlawful entrapment.

33 **“§ 532. Official Misstatement of Law**

34 “‘It is an affirmative defense to a prosecution under any federal
35 statute that the defendant’s conduct in fact conformed with an official
36 statement of the law, afterward determined to be invalid or erroneous:

37 “(a) which is contained in:

38 “(1) a statute; or

39 “(2) a decision of the United States Supreme Court; or

40 “(b) which is contained in:

1 described in this section if any such circumstance has occurred or
2 would occur if the offense attempted were committed.

3 **“§ 1002. Criminal Conspiracy**

4 “(a) OFFENSE.—A person is guilty of conspiracy to commit an of-
5 fense if he agrees with one or more persons to engage in or cause
6 the performance of conduct which, in fact, constitutes an offense or
7 offenses, and he or one of such persons does or causes any act to effect
8 any objective of the agreement.

9 “(b) DEFINITION.—As used in this section, ‘objective’ includes the
10 commission of an offense, escape from the scene of an offense, distribu-
11 tion of the fruits of an offense, and any measure, other than silence,
12 for concealing or obstructing justice in relation to any aspect of the
13 conspiracy.

14 “(c) DEFENSES PRECLUDED.—It is not a defense to a prosecution
15 under this section that any one or more of the persons with whom the
16 defendant is alleged to have conspired has been acquitted, has not been
17 prosecuted or convicted, has been convicted of a different offense, or
18 was incompetent or irresponsible, or is immune from prosecution or
19 otherwise not subject to prosecution.

20 “(d) LIABILITY FOR OFFENSES COMMITTED BY OTHERS.—Liability for
21 offenses committed in furtherance of a conspiracy is governed by the
22 provisions of section 401(a)(3).

23 “(e) GRADING.—An offense described in this section is:

24 “(1) an offense of the same class as the most serious offense
25 which is an objective of the conspiracy if the most serious offense
26 is:

27 “(A) a felony described in section 1101 (Treason), 1111
28 (Sabotage), 1121 (Espionage), 1601 (Murder), 1611 (Maim-
29 ing), 1621 (Kidnapping), 1625 (Aircraft Hijacking), 1701
30 (Arson), 1721 (Robbery), 1722 (Extortion), 1724 (a)(1) or
31 (a)(2) (Loansharking), 1821 (Trafficking in Heroin or Mor-
32 phine), 1822 (Trafficking in Drugs), or 1861 (Racketeering);
33 or

34 “(B) a misdemeanor;

35 “(2) a Class D felony if the most serious offense which is an
36 objective of the conspiracy is a felony other than a felony set forth
37 in paragraph (1)(A).

38 “(f) JURISDICTION.—There is federal jurisdiction over an offense
39 described in this section if any objective of the conspiracy is a federal
40 offense; if federal jurisdiction over all offenses which are objectives of
41 the conspiracy is limited to certain specified circumstances, there is

1 federal jurisdiction over an offense described in this section where any
2 such circumstance has occurred or would occur if any offense which is
3 an objective of the conspiracy were committed.

4 **“§ 1003. Criminal Solicitation**

5 “(a) OFFENSE.—A person is guilty of solicitation to commit an of-
6 fense if he commands, entreats, induces, or otherwise endeavors to
7 persuade another person to engage, as a principal or an accomplice, in
8 conduct which, in fact, constitutes an offense under section 1101
9 (Treason), 1111 (Sabotage), 1121 (Espionage), 1332 (Failing to Ap-
10 pear, to Produce Information, or to be Sworn), 1333 (Refusing to
11 Testify), 1341 (Perjury), 1601 (Murder), 1611 (Maiming), 1621
12 (Kidnapping), 1625 (Aircraft Hijacking), 1701 (Arson), or 1821
13 (Trafficking in Heroin or Morphine), and does so with intent to cause
14 or aid the commission of such offense, and under circumstances strongly
15 corroborative of such intent.

16 “(b) DEFENSE PRECLUDED.—Unless relevant in determining the
17 solicitor’s intent, it is not a defense to a prosecution under this section
18 that the person solicited could not be guilty of the offense because of
19 lack of culpability or because he was incompetent or irresponsible, or is
20 immune from prosecution or otherwise not subject to prosecution.

21 “(c) GRADING.—An offense described in this section is an offense of
22 the class next below that of the offense solicited, except that solicitation
23 to engage in conduct which constitutes an offense under section 1341
24 (Perjury) is a Class D felony.

25 “(d) JURISDICTION.—There is federal jurisdiction over an offense
26 described in this section if the offense solicited is a federal offense; if
27 federal jurisdiction over the offense solicited is limited to certain
28 specified circumstances, there is federal jurisdiction over an offense
29 described in this section if any such circumstance has occurred or
30 would occur if the offense solicited were committed.

31 **“§ 1004. General Provisions for Sections 1001 through 1003**

32 “(a) MUTUAL INAPPLICABILITY.—It is not an offense to attempt to
33 commit, to conspire to commit, or to solicit the commission of, an
34 offense described in sections 1001 through 1003.

35 “(b) ATTEMPT AND CONSPIRACY OFFENSES OUTSIDE THIS CHAPTER.—
36 Wherever an ‘attempt’ to commit an offense or a ‘conspiracy’ to com-
37 mit an offense is made an offense outside this chapter, it means crimi-
38 nal attempt or criminal conspiracy as described in this chapter.

“(c) AFFIRMATIVE DEFENSE OF RENUNCIATION.—

“(1) ATTEMPT.—It is an affirmative defense to a prosecution under section 1001 that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking affirmative steps which prevented the commission of the offense.

“(2) SOLICITATION.—It is an affirmative defense to a prosecution under section 1003 that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the offense solicited.

“(3) ‘VOLUNTARY AND COMPLETE’ DEFINED.—A renunciation is not ‘voluntary and complete’ within the meaning of this section if it is motivated in whole or in part by:

“(A) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the offense, or which makes more difficult the consummation of the offense; or

“(B) a decision to postpone the commission of the offense until another time or to substitute another victim or another but similar objective.

**“Chapter 11. OFFENSES INVOLVING NATIONAL
SECURITY**

“Sec.

“1101. Treason.

“1102. Armed Rebellion or Insurrection.

“1103. Inciting Overthrow or Destruction of the Government.

“1104. Para-Military Political Activities.

“1111. Sabotage.

“1112. Impairing Military Effectiveness.

“1113. Violating Emergency Regulations Concerning Vessels.

“1114. Impairing Military Effectiveness by False Statement.

“1115. Evading Military or Substitute Service.

“1116. Obstructing Military Recruitment or Induction.

“1117. Inciting or Aiding Mutiny, Insubordination, or Desertion.

“1118. Aiding Escape of a Prisoner of War or an Enemy Alien.

“1121. Espionage.

“1122. Disclosing National Defense Information.

“1123. Mishandling National Defense Information.

“1124. Disclosing Classified Information.

“1125. Unlawfully Obtaining Classified Information.

“1126. Definitions for Sections 1121 through 1125.

“1127. Failing to Register as a Person Trained in a Foreign Espionage System.

“1128. Failing to Register as, or Acting as, a Foreign Agent.

“1131. Offenses Relating to Atomic Energy.

“§ 1101. Treason

“(a) OFFENSE.—A person is guilty of an offense, if, while in fact owing allegiance to the United States, he:

1 “(1) adheres to the foreign enemies of the United States and
2 intentionally gives them aid and comfort ; or

3 “(2) levies war against the United States by engaging in armed
4 rebellion or insurrection against the authority of the United States
5 or a state with intent to :

6 “(A) overthrow, destroy, supplant, or change the form of
7 government of the United States ; or

8 “(B) sever a state’s relationship with the United States.

9 “(b) GRADING.—An offense described in this section is :

10 “(1) a Class A felony in the circumstances set forth in sub-
11 section (a) (1) ;

12 “(2) a Class B felony in the circumstances set forth in subsection
13 (a) (2).

14 **“§ 1102. Armed Rebellion or Insurrection**

15 “(a) OFFENSE.—A person is guilty of an offense if he engages in
16 armed rebellion or insurrection against the United States with intent
17 to oppose the execution of any law of the United States.

18 “(b) GRADING.—An offense described in this section is a Class C
19 felony.

20 **“§ 1103. Inciting Overthrow or Destruction of the Government**

21 “(a) A person is guilty of an offense if, with intent to bring about
22 the overthrow or destruction of the government of the United States,
23 or any state or local government, as speedily as circumstances permit,
24 he :

25 “(1) incites others to engage in conduct which then or at some
26 future time would facilitate the overthrow or destruction by force
27 of that government ; or

28 “(2) organizes, leads, recruits members for, joins, or remains an
29 active member of, an organization which has as a purpose the
30 incitement described in subsection (a) (1).

31 “(b) GRADING.—An offense described in this section is a Class C
32 felony.

33 **“§ 1104. Para-Military Political Activities**

34 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
35 engages in the acquisition, caching, use, or training in the use, of
36 weapons by or on behalf of an organization or group of ten or more
37 persons, which organization or group has as a purpose the taking over
38 of, the control of, or the assumption of the function of, an agency of the
39 United States government or of any state or local government, by force
40 or threat of force.

1 “(b) GRADING.—An offense described in this section is a Class D
2 felony.

3 “§ 1111. Sabotage

4 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
5 impair, interfere with, or obstruct the ability of the United States or
6 an associate nation to prepare for or engage in war or defense activi-
7 ties, he:

8 “(1) damages, tampers with, contaminates, defectively makes,
9 or defectively repairs:

10 “(A) any property which is owned by, or is under the care,
11 custody, or control of, the United States or an associate nation
12 or is being produced, manufactured, constructed, repaired, or
13 stored for the United States or an associate nation;

14 “(B) any other property particularly suited for national
15 defense use;

16 “(C) any facility engaged in whole or in part, for the
17 United States or an associate nation, in:

18 “(i) classified military projects;

19 “(ii) furnishing defense materials or services; or

20 “(iii) producing raw material necessary to the support
21 of a national defense production or mobilization pro-
22 gram; or

23 “(D) any facility of public communication, transportation,
24 power, or other public utility service;

25 “(2) delivers any property described in paragraph (1) (A) or
26 (B) which has been damaged, tampered with, contaminated, de-
27 fectively made, or defectively repaired; or

28 “(3) delays or obstructs:

29 “(A) the production, manufacture, construction, repair,
30 or delivery of any property described in paragraph (1) (A)
31 or (B); or

32 “(B) any service or any facility of government or public
33 communication, transportation, power, or other utility
34 service.

35 “(b) GRADING.—An offense described in this section is:

36 “(1) a Class A felony if committed in time of war in the cir-
37 cumstances set forth in subsection (a) (1) or (2), and if the of-
38 fense causes damage to or impairment of a major weapons system
39 or a means of defense, warning, or retaliation against large scale
40 attack;

1 “(2) a Class B felony if committed in time of war in any other
2 case, or if committed during a national defense emergency;

3 “(3) a Class C felony in any other case.

4 **“§ 1112. Impairing Military Effectiveness**

5 “(a) OFFENSE.—A person is guilty of an offense if, in reckless dis-
6 regard of the fact that his conduct might impair, interfere with, or
7 obstruct the ability of the United States or an associate nation to pre-
8 pare for or engage in war or defense activities, he engages in any con-
9 duct which, in fact, is described in:

10 “(1) paragraph (1) or (2) of section 1111(a); or

11 “(2) paragraph (3) of section 1111(a), other than conduct
12 occurring in the usual course of lawful labor strike activity, or
13 other lawful concerted activity for the purpose of collective bar-
14 gaining or other mutual aid and protection.

15 “(b) GRADING.—An offense described in this section is:

16 “(1) a Class C felony if committed in time of war in the circum-
17 stances set forth in subsection (a) (1), and if the offense causes
18 damage to or impairment of a major weapons system or a means of
19 defense, warning, or retaliation against large scale enemy attack;

20 “(2) a Class D felony if committed in time of war in any other
21 case, or if committed during a national defense emergency;

22 “(3) a Class E felony in any other case.

23 **“§ 1113. Violating Emergency Regulations Concerning Vessels**

24 “(a) OFFENSE.—A person is guilty of an offense if he violates a
25 regulation, rule, or order issued pursuant to title II of the Act of
26 June 15, 1917, as amended (50 U.S.C. 191 et seq.).

27 “(b) GRADING.—An offense described in this section is a Class D
28 felony.

29 **“§ 1114. Impairing Military Effectiveness by False Statement**

30 “(a) OFFENSE.—A person is guilty of an offense if, in time of war
31 and with intent to aid the enemy or to impair, interfere with, or
32 obstruct the ability of the United States to engage in war or defense
33 activities, he knowingly communicates a statement, which in fact is
34 false, concerning:

35 “(1) losses, plans, operations, or conduct of the military forces
36 of the United States, or those of an associate nation or of the
37 enemy;

38 “(2) civilian or military catastrophe; or

39 “(3) any other matter of fact which, if believed, would be
40 likely to affect the strategy or tactics of the military forces of

1 the United States or likely to create general panic or serious
2 disruption.

3 “(b) GRADING.—An offense described in this section is:

4 “(1) a Class C felony if committed with intent to aid the
5 enemy;

6 “(2) a Class D felony in any other case.

7 **“§ 1115. Evading Military or Substitute Service**

8 “(a) OFFENSE.—A person is guilty of an offense if:

9 “(1) knowing that he is under a duty to register for, to report
10 for, or to submit to induction pursuant to the provisions of any
11 federal statute governing military service, or a presidential pro-
12 clamations, regulation, or administrative order promulgated there-
13 under, he fails, neglects, or refuses to register for, to report for,
14 or to submit to induction;

15 “(2) knowing that he is under a duty to report for and perform
16 civilian service in lieu of induction pursuant to the provisions of
17 any federal statute governing military service, or a presidential
18 proclamation, regulation, or administrative order promulgated
19 thereunder, he fails, neglects, or refuses to:

20 “(A) report for civilian service; or

21 “(B) enter upon, perform, or satisfactorily complete such
22 service;

23 “(3) knowing that he is under a duty to report for and to sub-
24 mit to an examination to determine his availability for military
25 or civilian service pursuant to the provisions of any federal
26 statute governing military service, or a presidential proclamation,
27 regulation, or administrative order promulgated thereunder, he
28 fails, neglects, or refuses to report for or to submit to the exami-
29 nation; or

30 “(4) with intent to avoid or delay the military or civilian serv-
31 ice obligation of himself or another under the provisions of any
32 federal statute governing military service, or a presidential pro-
33 clamations, regulation, or administrative order thereunder, or to
34 obstruct the proper determination of the existence or nature of
35 such obligation, he engages in conduct which, in fact, constitutes
36 an offense under section 1342 (False Swearing) or 1343 (Making
37 a False Statement).

38 “(b) GENERAL PROVISIONS.—The provisions of section 1346 which
39 apply to section 1343 (Making a False Statement) apply also to this
40 section.

1 “(c) GRADING.—An offense described in this section is a Class D
2 felony.

3 **“§ 1116. Obstructing Military Recruitment or Induction**

4 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
5 hinder, interfere with, or obstruct, the recruitment, conscription, or
6 induction of a person into the armed forces of the United States,
7 he:

8 “(1) creates a physical interference or obstacle to such recruit-
9 ment, conscription, or induction;

10 “(2) uses force, threat, intimidation, or deception against a pub-
11 lic servant of any government agency engaged in such recruitment,
12 conscription, or induction; or

13 “(3) incites others to engage in conduct which, in fact, con-
14 stitutes an offense under section 1115 (Evading Military or Sub-
15 stitute Service).

16 “(b) GRADING.—An offense described in this section is a Class D
17 felony.

18 **“§ 1117. Inciting or Aiding Mutiny, Insubordination, or Desertion**

19 “(a) OFFENSE.—A person is guilty of an offense if:

20 “(1) with intent to bring about mutiny, insubordination, re-
21 fusals of duty, or desertion by members of the armed forces of the
22 United States, he incites such members to engage in mutiny, in-
23 subordination, refusal of duty, or desertion; or

24 “(2) he knowingly aids, abets, counsels, commands, induces,
25 procures, or facilitates the commission or attempted commission
26 of mutiny or desertion by a member of the armed forces of the
27 United States.

28 “(b) GRADING.—An offense described in this section is:

29 “(1) a Class C felony in the circumstances set forth in subsec-
30 tion (a) (1) if:

31 “(A) it is committed in time of war; or

32 “(B) the persons incited are engaged, or about to be en-
33 gaged, in combat;

34 “(2) a Class D felony in any other case.

35 **“§ 1118. Aiding Escape of a Prisoner of War or an Enemy Alien**

36 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

37 “(1) aids, abets, counsels, commands, induces, procures, or facil-
38 itates the escape or attempted escape of a person being held in
39 the custody of the United States or an associate nation as a pris-
40 oner of war or an enemy alien; or

1 “(2) interferes with, hinders, delays, or prevents the discovery
2 or apprehension of:

3 “(A) a prisoner of war or enemy alien who has escaped
4 from the custody of the United States or an associate nation;
5 or

6 “(B) an enemy alien being sought for detention by the
7 United States or an associate nation
8 by engaging in any conduct which, in fact, is described in sub-
9 paragraphs (A) through (D) of section 1311(a) (1).

10 “(b) GRADING.—An offense described in this section is a Class D
11 felony.

12 **“§ 1121. Espionage**

13 “(a) OFFENSE.—A person is guilty of an offense, if, with intent
14 that information relating to the national defense be used, or with
15 knowledge that it may be used, to the prejudice of the safety or in-
16 terest of the United States, or to the advantage of a foreign power,
17 he knowingly:

18 “(1) communicates such information to a foreign power;

19 “(2) obtains or collects such information for a foreign power
20 or with knowledge that it may be communicated to a foreign
21 power; or

22 “(3) enters a restricted area with intent to obtain or collect
23 such information for a foreign power or with knowledge that it
24 may be communicated to a foreign power.

25 “(b) GRADING.—An offense described in this section is:

26 “(1) a Class A felony:

27 “(A) if committed in time of war or during a national
28 defense emergency; or

29 “(B) if the information directly concerns nuclear weapon-
30 ry; military space craft or satellites; early warning systems
31 or other means of defense or retaliation against large scale
32 attack; war plans; communications intelligence or crypto-
33 graphic information; or any other major weapons system or
34 major element of defense strategy;

35 “(2) a Class B felony in any other case.

36 **“§ 1122. Disclosing National Defense Information**

37 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
38 communicates information relating to the national defense to a person
39 not authorized to receive it.

40 “(b) GRADING.—An offense described in this section is:

1 “(1) a Class C felony if committed during time of war or
2 during a national defense emergency;

3 “(2) a Class D felony in any other case.

4 **“§ 1123. Mishandling National Defense Information**

5 “(a) OFFENSE.—A person is guilty of an offense if:

6 “(1) being in possession or control of information relating to
7 the national defense, he recklessly permits its loss, destruction, or
8 theft, or communication to a person not authorized to receive it;

9 “(2) being in authorized possession or control of information
10 relating to the national defense:

11 “(A) he intentionally fails to deliver it on demand to a fed-
12 eral public servant authorized to demand it;

13 “(B) he knowingly fails to report promptly, to the agency
14 authorizing him to possess or control such information, its loss,
15 destruction, or theft, or communication to a person not author-
16 ized to receive it; or

17 “(C) he recklessly violates a duty imposed upon him by a
18 statute or executive order, or by a regulation or a rule of the
19 agency authorizing him to possess or control such information,
20 which statute, order, regulation, or rule is designed to safe-
21 guard such information; or

22 “(3) being in possession or control of information relating to
23 the national defense which he is not authorized to possess or retain,
24 he knowingly fails to deliver it promptly to a federal public serv-
25 ant entitled to receive it.

26 “(b) GRADING.—An offense described in this section is:

27 “(1) a Class E felony in the circumstances set forth in subsec-
28 tion (a) (2) (C);

29 “(2) a Class D felony in any other case.

30 **“§ 1124. Disclosing Classified Information**

31 “(a) OFFENSE.—A person is guilty of an offense if, being or having
32 been in authorized possession or control of classified information, or
33 having obtained such information as a result of his being or having
34 been a federal public servant, he knowingly communicates such in-
35 formation to a person not authorized to receive it.

36 “(b) EXCEPTIONS TO LIABILITY AS AN ACCOMPLICE OR CONSPIRATOR.—
37 A person not authorized to receive classified information is not sub-
38 ject to prosecution as an accomplice within the meaning of section 401
39 for an offense under this section, and is not subject to prosecution for
40 conspiracy to commit an offense under this section.

1 “(c) **DEFENSE.**—It is a defense to a prosecution under this section
2 that the information was communicated only to a regularly constituted
3 committee of the Senate or the House of Representatives of the United
4 States, or a joint committee thereof, pursuant to lawful demand.

5 “(d) **DEFENSE PRECLUDED.**—It is not a defense to a prosecution un-
6 der this section that the classified information was improperly classi-
7 fied at the time of its classification or at the time of the offense.

8 “(e) **GRADING.**—An offense described in this section is:

9 “(1) a Class D felony if the person to whom the information
10 is communicated is an agent of a foreign power;

11 “(2) a Class E felony in any other case.

12 **“§ 1125. Unlawfully Obtaining Classified Information**

13 “(a) **OFFENSE.**—A person is guilty of an offense if, being an agent
14 of a foreign power, he knowingly obtains or collects classified informa-
15 tion which, in fact, he is not authorized to receive.

16 “(b) **DEFENSE PRECLUDED.**—It is not a defense to a prosecution under
17 this section that the classified information was improperly classified
18 at the time of its classification or at the time of the offense.

19 “(c) **GRADING.**—An offense described in this section is a Class D
20 felony.”

21 **“§ 1126. Definitions for Section 1121 through 1125**

22 As used in sections 1121 through 1125:

23 “(a) ‘authorized,’ when used in relation to the receipt, posses-
24 sion, or control of classified information or information relating
25 to the national defense, means with authority to have access to,
26 to receive, to possess, or to control such information as a result
27 of the provisions of a statute or executive order, or a regulation
28 or rule thereunder;

29 “(b) ‘classified information’ means any information, regardless
30 of its origin, which is marked or designated pursuant to the
31 provisions of a statute or executive order, or a regulation or rule
32 thereunder, as information requiring a specific degree of protec-
33 tion against unauthorized disclosure for reasons of national
34 security;

35 “(c) ‘communicate’ means to impart information, to transfer
36 information, or otherwise to make information available by any
37 means, to a person or to the general public;

38 “(d) ‘communications intelligence information’ means
39 information:

40 “(1) regarding any procedures and methods used by the

1 United States or any foreign power in the interception of
2 communications and the obtaining of information from such
3 communications by other than the intended recipients;

4 “(2) regarding the use, design, construction, maintenance,
5 or repair of a device or apparatus used, or prepared or
6 planned for use, by the United States or a foreign power in
7 the interception of communications and the obtaining of in-
8 formation from such communications by other than the
9 intended recipients; or

10 “(3) obtained by use of the procedures or methods described
11 in paragraph (1), or by a device or apparatus described in
12 paragraph (2);

13 “(e) ‘cryptographic information’ means information:

14 “(1) regarding the nature, preparation, use or interpreta-
15 tion of a code, cipher, cryptographic system, or any other
16 method of any nature used for the purpose of disguising or
17 concealing the contents or significance or means of communi-
18 cations, whether of the United States or a foreign power;

19 “(2) regarding the use, design, construction, maintenance,
20 or repair of a device or apparatus used, or prepared or
21 planned for use, for cryptographic purposes, by the United
22 States or a foreign power; or

23 “(3) obtained by interpreting an original communication
24 by the United States or a foreign power which was in the form
25 of a code or cipher or which was transmitted by means of a
26 cryptographic system or any other method of any nature used
27 for the purpose of disguising or concealing the contents or
28 significance or means of communications;

29 “(f) ‘information’ includes any property from which informa-
30 tion may be obtained;

31 “(g) ‘information relating to the national defense’ includes
32 information, regardless of its origin, relating to:

33 “(1) the military capability of the United States or of an
34 associate nation;

35 “(2) military planning or operations of the United States;

36 “(3) military communications of the United States;

37 “(4) military installations of the United States;

38 “(5) military weaponry, weapons development, or weap-
39 ons research of the United States;

1 “(6) restricted data as defined in section 11 of the Atomic
2 Energy Act of 1954, as amended (42 U.S.C. 2014) ;

3 “(7) intelligence of the United States, and information
4 relating to intelligence operations, activities, plans, estimates,
5 analyses, sources, and methods, of the United States;

6 “(8) communications intelligence information or crypto-
7 graphic information as defined in subsection (d) or (e) ;

8 “(9) the conduct of foreign relations affecting the national
9 defense; or

10 “(10) in time of war, any other matter involving the secu-
11 rity of the United States which might be useful to the enemy;

12 “(h) ‘restricted area’ means any area of land, water, air, or
13 space which includes any facility of the United States, or of a con-
14 tractor or subcontractor with or for the United States, to which
15 access is restricted pursuant to a statute or executive order, or a
16 regulation or rule issued pursuant thereto, for reasons of national
17 defense.

18 **“§ 1127. Failing to Register as a Person Trained in a Foreign**
19 **Espionage System**

20 “(a) OFFENSE.—A person is guilty of an offense if he:

21 “(1) knowingly fails to register with the Attorney General as
22 required by section 2 of the Act of August 1, 1956 (50 U.S.C. 851) ;

23 “(2) knowingly violates any regulation promulgated pursuant
24 to the authority conferred in section 5 of the Act of August 1,
25 1956 (50 U.S.C. 854) ; or

26 “(3) knowingly makes a material false statement, or makes a
27 material false statement in reckless disregard of its truth or
28 falsity, or knowingly omits or conceals a material fact in a regis-
29 tration statement required by section 2 of the Act of August 1, 1956
30 (50 U.S.C. 851), or knowingly submits or invites reliance on any
31 material false writing submitted in connection with such a
32 registration.

33 “(b) GENERAL PROVISIONS.—The provisions of section 1346 which
34 apply to section 1343 (Making a False Statement) apply also to this
35 section.

36 “(c) GRADING.—An offense described in this section is a Class D
37 felony.

38 **“§ 1128. Failing to Register as, or Acting as, a Foreign Agent**

39 “(a) OFFENSE.—A person is guilty of an offense if:

40 “(1) being an agent of a foreign principal, he knowingly fails

1 to register with the Attorney General as required by section 2 of
2 the Foreign Agents Registration Act of 1938, as amended (22
3 U.S.C. 612);

4 “(2) he knowingly violates a provision of section 4(a) or 5, or
5 a provision of section 7 relating to a violation of section 4(a)
6 or 5, of the Foreign Agents Registration Act of 1938, as amended
7 (22 U.S.C. 614(a), 615, or 617), or a regulation, rule, or order
8 issued pursuant thereto;

9 “(3) being a federal public servant, he is or acts as an agent of a
10 foreign principal required to register under the Foreign Agents
11 Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), in
12 violation of 5 U.S.C. 9109;

13 “(4) being other than a diplomatic or consular officer or attache,
14 he acts in the United States as an agent of a foreign government
15 without prior notification to the Secretary of State; or

16 “(5) he knowingly makes a material false statement, or makes a
17 material false statement in reckless disregard of its truth or fal-
18 sity, or knowingly omits or conceals a material fact in a registra-
19 tion statement or a supplement thereto, required by any statute
20 relating to agents of foreign principals.

21 “(b) DEFINITIONS.—As used in this section, ‘agent of a foreign
22 principal’ and ‘foreign principal’ have the meanings set forth in
23 section 1 of the Foreign Agents Registration Act of 1938, as amended
24 (22 U.S.C. 611).

25 “(c) GENERAL PROVISIONS.—The provisions of section 1346 which
26 apply to section 1343 (Making a False Statement) apply also to this
27 section.

28 “(d) GRADING.—An offense described in this section is:

29 “(1) a Class D felony in the circumstances set forth in sub-
30 section (a) (1), (2), (4), or (5);

31 “(2) a Class E felony in the circumstances set forth in sub-
32 section (a) (3).

33 “§ 1131. Offenses Relating to Atomic Energy

34 “(a) OFFENSE.—A person is guilty of an offense if he engages in con-
35 duct which is in violation of section 57, 92, or 101 of the Act of August
36 1, 1946, as added by section 1 of the Atomic Energy Act of 1954, as
37 amended (42 U.S.C. 2077, 2122, or 2131), or which interferes with any
38 recapture or entry ordered under section 108 of such Act (42 U.S.C.
39 2138).

40 “(2) GRADING.—An offense described in this section is:

1 “(1) a Class C felony if the conduct is engaged in with intent
2 that it operate to the prejudice of the safety or interest of the
3 United States or to the advantage of a foreign power;

4 “(2) a Class D felony in any other case.

5 **“Chapter 12.—OFFENSES INVOLVING FOREIGN**
6 **RELATIONS AND IMMIGRATION**

“Sec.

“1201. Military Attack Against a Friendly Power.

“1202. Conspiracy Against a Friendly Power.

“1203. Entering or Recruiting for a Foreign Armed Force.

“1204. Causing Departure of a Vessel or Aircraft against the Interests of
Neutrality.

“1205. Disclosing a Foreign Diplomatic Code or Correspondence.

“1211. Engaging in an Unlawful International Transaction.

“1221. Unlawful Entry of an Alien into the United States.

“1222. Smuggling an Alien into the United States.

“1223. Hindering Discovery of an Alien Unlawfully in the United States.

“1224. Fraudulently Acquiring Naturalization or Evidence of Citizenship or Mis-
using Evidence of Citizenship.

“1225. Fraudulently Acquiring or Improperly Using a Passport.

“1226. General Provisions for Sections 1221 through 1225.

7 **“§ 1201. Military Attack Against a Friendly Power**

8 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
9 launches or carries on, from the United States, a military attack or
10 expedition against a foreign power with which the United States
11 is at peace.

12 “(b) DEFINITION.—As used in this section, ‘military attack or ex-
13 pedition’ against a foreign power means:

14 “(1) any manned or unmanned warlike assault upon:

15 “(A) the territory of such foreign power;

16 “(B) its inhabitants or property therein; or

17 “(C) its vessels or aircraft; or

18 “(2) any organized warlike invasion of its territory whether
19 launched from or carried on by land, sea, or air.

20 “(c) GRADING.—A offense described in this section is a Class D
21 felony.

22 **“§ 1202. Conspiracy against a Friendly Power**

23 “(a) OFFENSE.—A person is guilty of an offense if, within the United
24 States, he agrees with one or more persons to cause:

25 “(1) the death of a public servant of a foreign power, with
26 which the United States is at peace, on account of the perform-
27 ance of his official duties or because of his status as a public serv-
28 ant; or

29 “(2) damage to or destruction of property owned by, or under
30 the care, custody, or control of, a foreign power, with which
31 the United States is at peace, or a facility of public communica-

1 tion, transportation, or power located within the jurisdiction of
2 such foreign power

3 and he or one of such persons does or causes any act within the United
4 States to effect any objective of the agreement.

5 “(b) GRADING.—An offense described in this section is a Class D
6 felony.

7 **“§ 1203. Entering or Recruiting for a Foreign Armed Force**

8 “(a) OFFENSE.—A person is guilty of an offense if, within the
9 United States, he:

10 “(1) enters or agrees to enter the military forces of a foreign
11 power; or

12 “(2) engages another person to enter the military forces of a
13 foreign power.

14 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prose-
15 cution under subsection (a) (1) or (2) that:

16 “(1) the foreign power was an associate nation and the person
17 entering or agreeing to enter was not a citizen of the United
18 States; or

19 “(2) the foreign power was then at peace with the United
20 States and the person entering or agreeing to enter was a citizen
21 of the foreign power, and, in the case of a prosecution under
22 subsection (a) (2), the person engaging the other to enter was
23 also a citizen of the foreign power.

24 “(c) GRADING.—An offense described in this section is a Class E
25 felony.

26 **“§ 1204. Causing Departure of a Vessel or Aircraft against the**
27 **Interests of Neutrality**

28 “(a) OFFENSE.—A person is guilty of an offense if, during a war in
29 which the United States is a neutral nation, he causes the departure
30 from the United States of a vessel or aircraft:

31 “(1) which is equipped as a warship or warplane, with intent
32 that it be used, or with knowledge that it may be used, in the
33 service of a belligerent foreign power;

34 “(2) which is the subject of a detention order issued pursuant to
35 any statute of the United States designed to restrict or control
36 the delivery of vessels, aircraft, goods, or services to belligerent
37 foreign powers, or a regulation or rule issued pursuant to such
38 a statute; or

39 “(3) which has not been issued the clearance required by any
40 statute of the United States designed to restrict or control the

1 delivery of vessels, aircraft, goods, or services to belligerent for-
2 eign powers, or any regulation, rule, or order issued pursuant to
3 such a statute.

4 “(b) GRADING.—An offense described in this section is a Class D
5 felony.

6 **“§ 1205. Disclosing a Foreign Diplomatic Code or Correspondence**

7 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
8 communicates:

9 “(1) a diplomatic code of a foreign government, or any matter
10 prepared in such a code; or

11 “(2) any matter intercepted while in the process of transmis-
12 sion between a foreign government and its diplomatic mission
13 in the United States

14 to which he obtained access as a federal public servant.

15 “(b) GRADING.—An offense described in this section is a Class E
16 felony.

17 **“§ 1211. Engaging in an Unlawful International Transaction**

18 “(a) OFFENSE.—A person is guilty of an offense if he violates:

19 “(1) section 3(a) or 5(b) of the Trading with the Enemy Act,
20 as amended (50 U.S.C. App. 3(a) or 5(b));

21 “(2) section 7 of the Neutrality Act of 1939, as amended (22
22 U.S.C. 447);

23 “(3) section 5 of the United Nations Participation Act of 1945,
24 as amended (22 U.S.C. 287(c));

25 “(4) section 414 of the Mutual Security Act of 1954, as amended
26 (22 U.S.C. 1934); or

27 “(5) section 6(b) of the Export Administration Act of 1969
28 (50 U.S.C. App. 2405(b))

29 with intent to conceal any matter from a government agency author-
30 ized to administer such statute, or with knowledge that such conduct
31 obstructs, impairs, or perverts the administration of such statute or
32 of any government function.

33 “(b) GRADING.—An offense described in this section is a Class D
34 felony.

35 **“§ 1221. Unlawful Entry of an Alien into the United States**

36 “(a) OFFENSE.—A person is guilty of an offense if, being an alien, he
37 knowingly:

38 “(1) enters the United States at a time or place other than as
39 designated under a federal statute, or a regulation, rule, or order
40 issued pursuant thereto;

1 “(2) eludes examination or inspection by an immigration of-
2 ficer;

3 “(3) obtains entry into the United States by fraud; or

4 “(4) enters, or is present in, the United States after having been
5 deported from the United States under an order of exclusion or
6 deportation.

7 “(b) **AFFIRMATIVE DEFENSE.**—It is an affirmative defense to a prose-
8 cution under subsection (a) (4) that:

9 “(1) the Attorney General had expressly consented to the
10 alien’s reapplying for admission to the United States prior to his
11 reembarkation at a place outside the United States or his applica-
12 tion for admission from foreign contiguous territory; or

13 “(2) with respect to an alien previously deported under an order
14 of exclusion, he was not required by a federal statute to obtain
15 such advance consent.

16 “(c) **GRADING.**—An offense described in this section is:

17 “(1) a Class E felony if:

18 “(A) the actor uses a passport, certificate of naturaliza-
19 tion of citizenship, immigrant or nonimmigrant visa, border
20 crossing identification card, alien registration receipt card,
21 or other document prescribed by statute or regulation for
22 entry into, or evidence of authorized stay in, the United
23 States, which is forged or counterfeited or which pertains to
24 another person; or

25 “(B) the offense constitutes a violation of subsection (a) (4)
26 and the alien previously has been convicted of that same
27 offense or of any felony;

28 “(2) a Class B misdemeanor in any other case.

29 **“§ 1222. Smuggling an Alien into the United States**

30 “(a) **OFFENSE.**—A person is guilty of an offense if he knowingly
31 brings into or lands in the United States any alien, including an alien
32 crewman, not admitted to the United States by an immigration officer
33 or not lawfully entitled to enter or reside within the United States.

34 “(b) **GRADING.**—An offense described in this section is:

35 “(1) a Class D felony if the actor engages in the described con-
36 duct as consideration for anything of pecuniary value or with
37 knowledge that the alien intends to engage in conduct in the
38 United States which, in fact, constitutes a felony;

39 “(2) a Class E felony in any other case if the actor engages in

1 the described conduct knowing that the alien is a member of the
2 class of aliens, in fact, excludable from the United States under
3 section 212(a) (27), (28), or (29) of the Immigration and Na-
4 tionality Act of 1952, as amended (8 U.S.C. 1182(a) (27), (28),
5 or 29) ;

6 “(3) a Class A misdemeanor in any other case.

7 **“§ 1223. Hindering Discovery of an Alien Unlawfully in the**
8 **United States**

9 “(a) OFFENSE.—A person is guilty of an offense if he intentionally
10 interferes with, hinders, delays, or prevents the discovery or appre-
11 hension of any alien, including an alien crewman, unlawfully within
12 the United States, by :

13 “(1) harboring such alien or concealing him or his identity ;

14 “(2) providing such alien with a weapon, money, transportation,
15 disguise, or other means of avoiding discovery or apprehension ;

16 “(3) warning such alien of impending discovery or apprehen-
17 sion ; or

18 “(4) altering, destroying, mutilating, concealing, or removing a
19 record, document, or other tangible object, regardless of its admis-
20 sibility in evidence.

21 “(b) GRADING.—An offense described in this section is :

22 “(1) a Class E felony if the actor engages in the conduct :

23 “(A) as consideration for anything of pecuniary value ;

24 “(B) with intent to receive consideration for placing such
25 alien in the employ of another ;

26 “(C) with intent that such alien be employed or continued
27 in the employ of an enterprise operated for profit ; or

28 “(D) with knowledge that such alien intends to engage in
29 conduct in the United States which, in fact, constitutes a
30 felony ;

31 “(2) a Class A misdemeanor in any other case.

32 **“§ 1224. Fraudulently Acquiring Naturalization or Evidence of**
33 **Citizenship or Misusing Evidence of Citizenship**

34 “(a) OFFENSE.—A person is guilty of an offense if he knowingly :

35 “(1) obtains for any person, by fraud, United States naturaliza-
36 tion, the creation of a record of permanent residence in the United
37 States, or the issuance of any certificate or other documentary
38 evidence of United States naturalization or citizenship ;

39 “(2) uses any certificate or other documentary evidence of

1 United States naturalization or citizenship, or a copy or dupli-
 2 cate thereof, which was obtained by fraud; or

3 “(3) uses any certificate or other documentary evidence of
 4 United States naturalization or citizenship issued to another, or
 5 a copy or duplicate thereof, as showing naturalization or citizen-
 6 ship of any person other than the person for whom it was lawfully
 7 issued.

8 “(b) GRADING.—An offense described in this section is a Class E
 9 felony.

10 **“§ 1225. Fraudulently Acquiring or Improperly Using a Passport**

11 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

12 “(1) obtains the issuance or verification of a United States pass-
 13 port by fraud;

14 “(2) uses a United States passport the issuance or verification of
 15 which was obtained by fraud; or

16 “(3) uses a United States passport which was issued for the use
 17 of another;

18 “(b) GRADING.—An offense described in this section is a Class E
 19 felony.

20 **“§ 1226. General Provisions for Sections 1221 through 1225**

21 “(a) DEFINITIONS.—As used in sections 1221 through 1225:

22 “(1) ‘alien’, ‘application for admission’, ‘border crossing identi-
 23 fication card’, ‘crewman’, ‘entry’, ‘immigration officer’, ‘passport’,
 24 ‘United States’, and ‘visa’ have the meanings prescribed in section
 25 101 of the Immigration and Nationality Act, as amended (8
 26 U.S.C. 1101);

27 “(2) ‘fraud’ includes conduct described in sections 1301(a) and
 28 1343(a) (1) (A) through (F).

29 “(b) PROOF OF MATERIALITY.—Where materiality is an element of an
 30 offense described in sections 1221 through 1225, the provisions of sec-
 31 tion 1346(b) (2) apply to such sections.

32 **“Chapter 13.—OFFENSES INVOLVING GOVERNMENT**
 33 **OPERATIONS**

“Sec.

“1301. Obstructing a Government Function by Fraud.

“1302. Obstructing a Government Function by Physical Interference.

“1311. Hindering Law Enforcement.

“1312. Aiding Consummation of a Crime.

“1313. Bail Jumping.

“1314. Escape.

“1315. Providing or Possessing Contraband in an Official Detention Facility.

“1316. Flight to Avoid Prosecution or Giving Testimony.

“1321. Witness Bribery.

“1322. Corrupting a Witness or an Informant.

- "1323. Tampering with a Witness or an Informant.
- "1324. Retaliating against a Witness or an Informant.
- "1325. Tampering with Physical Evidence.
- "1326. Communicating with a Juror.
- "1327. Monitoring Jury Deliberations.
- "1328. Demonstrating to Influence a Judicial Proceeding.
- "1331. Criminal Contempt.
- "1332. Failing to Appear, Produce Information, or to be Sworn.
- "1333. Refusing to Testify.
- "1334. Certification for Prosecution Under Section 1332 or 1333 in which a Congressional Proceeding is Involved.
- "1335. Obstructing a Proceeding by Disorderly Conduct.
- "1336. Disobeying a Judicial Order.
- "1341. Perjury.
- "1342. False Swearing.
- "1343. Making a False Statement.
- "1334. Making a False Report.
- "1345. Tampering with a Government Record.
- "1346. General Provisions for Sections 1341 through 1345.
- "1351. Bribery.
- "1352. Graft.
- "1353. Trading in Government Assistance.
- "1354. Trading in Special Influence.
- "1355. Trading in Public Office.
- "1356. Speculating an Official Action or Information.
- "1357. Tampering with a Public Servant.
- "1358. Retaliating against a Public Servant.
- "1359. Definitions for Sections 1351 through 1358.
- "1361. Impersonating an Official.

1 **"§ 1301. Obstructing a Government Function by Fraud**

2 "(a) OFFENSE.—A person is guilty of an offense if he intentionally
3 obstructs, impairs, or perverts a government function by defrauding
4 the government in any manner.

5 "(b) GRADING.—An offense described in this section is a Class D
6 felony.

7 "(c) JURISDICTION.—There is federal jurisdiction over an offense
8 described in this section if the government function is a federal govern-
9 ment function.

10 **"§ 1302. Obstructing a Government Function by Physical Inter-**
11 **ference**

12 "(c) OFFENSE.—A person is guilty of an offense if he intentionally
13 obstructs, impairs, or perverts a government function by means of
14 physical interference or obstacle.

15 "(b) DEFENSE.—It is a defense to a prosecution under this section
16 that the government function was:

17 "(1) unlawful; and

18 "(2) conducted by a public servant not acting in good faith.

19 "(c) GRADING.—An offense described in this section is a Class A
20 misdemeanor.

21 "(d) JURISDICTION.—There is federal jurisdiction over an offense

1 described in this section if the government function is a federal govern-
2 ment function.

3 **“§ 1311. Hindering Law Enforcement**

4 “(a) OFFENSE.—A person is guilty of an offense if he:

5 “(1) intentionally interferes with, hinders, delays, or prevents,
6 the discovery, apprehension, prosecution, conviction, or punish-
7 ment of another person who has committed a crime or deserted
8 from the armed forces or who is charged with or being sought
9 for a crime or desertion from the armed forces, by:

10 “(A) harboring the other person or concealing him or his
11 identity;

12 “(B) providing the other person with a weapon, money,
13 transportation, disguise, or other means of avoiding discovery
14 or apprehension;

15 “(C) warning the other person of impending discovery or
16 apprehension; or

17 “(D) altering, destroying, mutilating, concealing, or re-
18 moving a record, document, or other tangible object regard-
19 less of its admissibility in evidence; or

20 “(2) interferes with, hinders, delays, or prevents the discovery,
21 apprehension, prosecution, conviction, or punishment of another
22 person who has committed, or who is charged with or being sought
23 for, conduct which, in fact, constitutes an offense under section
24 1101 (Treason), 1111 (Sabotage), 1121 (Espionage), or, if the
25 victim is the President or Vice President, 1601 (Murder), by
26 engaging in any conduct described in subparagraphs (A) through
27 (D) of paragraph (1).

28 “(b) GRADING.—An offense described in this section is:

29 “(1) a Class D felony:

30 “(A) in the circumstances set forth in subsection (a) (2); or

31 “(B) if the actor knows of the conduct of the other person,
32 or knows that the other person has been charged with or
33 convicted of a crime, and such conduct or crime is a Class A,
34 B, or C felony;

35 “(2) a Class E felony if the actor knows of the conduct of the
36 other person, or knows that the other person has been charged
37 with or convicted of a crime, or desertion from the armed forces,
38 and such conduct or crime is a Class D felony or such desertion is
39 from the armed forces in time of war;

40 “(3) a Class A misdemeanor in any other case.

1 “(c) JURISDICTION.—There is federal jurisdiction over an offense
2 described in this section if:

3 “(1) federal jurisdiction exists over the crime which the other
4 person has committed, with which he is charged, or for which he
5 is being sought; or

6 “(2) the armed forces are the armed forces of the United States.

7 **“§ 1312. Aiding Consummation of a Crime**

8 “(a) OFFENSE.—A person is guilty of an offense if he intentionally
9 aids another person to secrete, disguise, or convert the proceeds of a
10 crime or otherwise profit from a crime.

11 “(b) GRADING.—An offense described in this section is:

12 “(1) a Class D felony if the actor knows of the conduct of the
13 other person and such conduct is a Class A, B, or C felony;

14 “(2) a Class E felony if the actor knows of the conduct of the
15 other person and such conduct is a Class D felony;

16 “(3) a Class A misdemeanor in any other case.

17 “(c) JURISDICTION.—There is federal jurisdiction over an offense
18 described in this section if federal jurisdiction exists over the crime
19 committed by the other person.

20 **“§ 1313. Bail Jumping**

21 “(a) OFFENSE.—A person is guilty of an offense if, after having
22 been released pursuant to the provisions of chapter 207, he fails to ap-
23 pear before a court or judicial officer as required.

24 “(b) GRADING.—An offense described in this section is:

25 “(1) a Class D felony if the person was released in connection
26 with a charge of a felony, or while awaiting sentence or pending
27 appeal or certiorari after conviction of any crime, except that
28 if the most serious offense with which the person was charged is a
29 Class A, B, or C felony, the offense under this section is of the
30 same class as such offense;

31 “(2) a Class A misdemeanor if the person was released in con-
32 nection with a charge of a misdemeanor or for appearance as a
33 material witness.

34 **“§ 1314. Escape**

35 “(a) OFFENSE.—A person is guilty of an offense if he:

36 “(1) escapes from official detention; or

37 “(2) fails to return to official detention following temporary
38 leave granted for a specific purpose or limited period.

39 “(b) AFFIRMATIVE DEFENSE.—Illegality in bringing about or main-

1 taining an official detention, or lack of jurisdiction of the committing
2 or detaining authority, is an affirmative defense to a prosecution under
3 this section if:

4 “(1) the offense did not involve escape from a prison or other
5 facility used for official detention;

6 “(2) the offense did not involve a substantial risk of harm to the
7 person or property of another; and

8 “(3) the official detention was not in good faith.

9 “(c) GRADING.—An offense described in this section is:

10 “(1) a Class D felony if the actor was in official detention:

11 “(A) on a charge of, or as a result of an arrest for, a felony;
12 or

13 “(B) pursuant to his conviction of an offense other than
14 an adjudication of juvenile delinquency;

15 “(2) a Class A misdemeanor in any other case.

16 “(d) JURISDICTION.—There is federal jurisdiction over an offense
17 described in this section if:

18 “(1) the official detention resulted from an arrest made, or an
19 order or process issued, under the laws of the United States;

20 “(2) the escape is from a federal public servant;

21 “(3) the escape is from a federal facility used for official de-
22 tention; or

23 “(4) the escape is from a facility used for persons charged with,
24 or convicted of, crimes under the laws of the United States appli-
25 cable exclusively to the District of Columbia.

26 **“§ 1315. Providing or Possessing Contraband in an Official De-**
27 **tention Facility**

28 “(a) OFFENSE.—A person is guilty of an offense if, surreptitiously
29 or contrary to a statute or a regulation, rule, or order issued pursuant
30 thereto:

31 “(1) he provides to an inmate of an official detention facility, or
32 introduces into an official detention facility:

33 “(A) a weapon or other object which may be used as a
34 weapon or as a means of facilitating escape, or a narcotic
35 drug set forth in schedule I or II of section 202 of the Con-
36 trolled Substances Act (21 U.S.C. 812);

37 “(B) any other controlled substance set forth in such Act,
38 an alcoholic beverage, or United States currency; or

39 “(C) any other object; or

1 “(2) being an inmate of an official detention facility, he makes,
2 possesses, procures, or otherwise provides himself with an object
3 described in subparagraphs (A) through (C) of paragraph (1).

4 “(b) GRADING.—An offense described in this section is:

5 “(1) a Class C felony if the object is a firearm or destructive
6 device;

7 “(2) a Class D felony if the object is anything else set forth
8 in subparagraph (A) of paragraph (1);

9 “(3) a Class A misdemeanor if the object is anything set forth
10 in subparagraph (B) of paragraph (1);

11 “(4) a Class B misdemeanor in any other case.

12 “(c) JURISDICTION.—There is federal jurisdiction over an offense
13 described in this section if the official detention facility is a federal
14 facility.

15 **“§ 1316. Flight To Avoid Prosecution or Giving Testimony**

16 “(a) OFFENSE.—A person is guilty of an offense if he moves or
17 travels across a state or United States boundary with intent to avoid:

18 “(1) prosecution, or detention after conviction, under the laws
19 of the place from which he flees, for an attempt to commit, a
20 conspiracy to commit, or the commission of an offense punishable
21 by imprisonment for more than one year under the laws of such
22 place;

23 “(2) appearing as a witness, giving testimony, or producing
24 information in an official proceeding in the place from which
25 he flees, in which an offense described in paragraph (1) is charged
26 or under investigation; or

27 “(3) contempt proceedings, or criminal prosecution, or deten-
28 tion after conviction, for failure to appear as a witness, give
29 testimony, or produce information in an official proceeding in
30 the place from which he flees, in which an offense described in
31 paragraph (1) is charged or under investigation.

32 “(b) GRADING.—An offense described in this section is a Class E
33 felony.

34 **“§ 1321. Witness Bribery**

35 “(a) OFFENSE.—A person is guilty of an offense if:

36 “(1) he knowingly offers, gives, or agrees to give to another
37 person; or

38 “(2) solicits, demands, accepts, or agrees to accept from another
39 person anything of value in return for an agreement or under-

1 standing that the testimony of the recipient will be influenced
2 in an official proceeding.

3 “(b) DEFINITION.—As used in this section, the term ‘anything of
4 value’ does not include the payment or receipt of:

5 “(1) a witness fee provided by statute;

6 “(2) reimbursement for the reasonable cost of travel and sub-
7 sistence incurred by a witness, and for the reasonable value of
8 time lost by a witness, as a result of attendance at an official
9 proceeding; or

10 “(3) a reasonable fee for preparing and presenting an opinion
11 as an expert witness.

12 “(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution under
13 this section that an official proceeding was not pending or about to be
14 instituted.

15 “(d) GRADING.—An offense described in this section is a Class C
16 felony.

17 “(e) JURISDICTION.—There is federal jurisdiction over an offense
18 described in this section if:

19 “(1) the official proceeding is or would be a federal official
20 proceeding;

21 “(2) the United States mail or a facility of interstate or for-
22 eign commerce is used in the planning, promotion, management,
23 execution, consummation, or concealment of the offense, or in the
24 distribution of the proceeds of the offense; or

25 “(3) movement of a person across a state or United States
26 boundary occurs in the course of the planning, promotion, man-
27 agement, execution, consummation, or concealment of the offense,
28 or in the course of the distribution of the proceeds of the offense.

29 **“§ 1322. Corrupting a Witness or an Informant**

30 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

31 “(1) offers, gives, or agrees to give to another person, or solicits,
32 demands, accepts, or agrees to accept from another person, any-
33 thing of value for or because of any person’s:

34 “(A) testimony in an official proceeding;

35 “(B) withholding testimony, information, a document, or
36 any other thing from an official proceeding, whether or not
37 the person would be legally privileged to withhold such testi-
38 mony, information, document, or other thing;

39 “(C) engaging in conduct which, in fact, constitutes a viola-
40 tion of section 1325 (Tampering with Physical Evidence);

1 “(D) evading legal process summoning him to testify in an
2 official proceeding; or

3 “(E) absenting himself from an official proceeding to which
4 he has been summoned; or

5 “(2) offers, gives, or agrees to give anything of value to an
6 other person for or because of any person’s hindering, delaying, or
7 preventing the communication of information relating to an of-
8 fense to a law enforcement officer.

9 “(b) DEFINITION.—As used in this section, the term ‘anything of
10 value’ does not include the payment or receipt of:

11 “(1) a witness fee provided by statute;

12 “(2) reimbursement for the reasonable cost of travel and sub-
13 sistence incurred by a witness, and for the reasonable value of
14 time lost by a witness, as a result of attendance at an official pro-
15 ceeding; or

16 “(3) a reasonable fee for preparing and presenting an opinion
17 as an expert witness.

18 “(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution un-
19 der this section that an official proceeding was not pending or about
20 to be instituted.

21 “(d) GRADING.—An offense described in this section is a Class E
22 felony.

23 “(e) JURISDICTION.—There is federal jurisdiction over an offense
24 described in this section if:

25 “(1) the official proceeding is or would be a federal official
26 proceeding;

27 “(2) the law enforcement officer is a federal public servant and
28 the information relates to an offense over which federal jurisdic-
29 tion exists;

30 “(3) the United States mail or a facility of interstate or foreign
31 commerce is used in the planning, promotion, management, execu-
32 tion, consummation, or concealment of the offense, or in the dis-
33 tribution of the proceeds of the offense; or

34 “(4) movement of a person across a state or United States
35 boundary occurs in the course of the planning, promotion, man-
36 agement, execution, consummation, or concealment of the offense,
37 or in the course of the distribution of the proceeds of the offense.

38 **“§ 1323. Tampering With a Witness or an Informant**

39 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

40 “(1) uses force, threat, intimidation, or deception to:

1 “(A) influence the testimony of another person in an offi-
2 cial proceeding; or

3 “(B) cause or induce another person to:

4 “(i) withhold testimony, information, a document, or any
5 other thing from an official proceeding, whether or not the
6 person would be legally privileged to do so, and regardless
7 of its admissibility in evidence;

8 “(ii) engage in conduct which, in fact, constitutes a vio-
9 lation of section 1325 (Tampering with Physical Evidence);

10 “(iii) evade legal process summoning him to testify in an
11 official proceeding; or

12 “(iv) absent himself from an official proceeding to which
13 he has been summoned; or

14 “(C) hinder, delay, or prevent the communication of in-
15 formation relating to an offense to a law enforcement officer;
16 or

17 “(2) does any other act improperly to influence, or to obstruct
18 impair, or pervert the:

19 “(A) administration of justice;

20 “(B) administration of a law under which an official pro-
21 ceeding is being conducted; or

22 “(C) exercise of the Congressional power of inquiry.

23 “(b) DEFENSE.—It is a defense to a prosecution under subsection
24 (a) (1) (A) that the threat was of lawful conduct and was used solely
25 to influence the person to testify truthfully.

26 “(c) DEFENSE PRECLUDED.—It is not a defense to a prosecution
27 under this section that an official proceeding was not pending or about
28 to be instituted.

29 “(d) GRADING.—An offense described in this section is a Class D
30 felony.

31 “(e) JURISDICTION.—There is federal jurisdiction over an offense
32 described in this section if:

33 “(1) the official proceeding is or would be a federal official
34 proceeding;

35 “(2) the law enforcement officer is a federal public servant and
36 the information relates to an offense over which federal juris-
37 diction exists;

38 “(3) the United States mail or a facility of interstate or foreign
39 commerce is used in the planning, promotion, management, execu-

tion, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

“(4) movement of a person across a state or United States boundary occurs in the course of the planning, promotion, management, execution, consummation, or concealment of the offense, or in the course of the distribution of the proceeds of the offense.

“§ 1324. Retaliating against a Witness or an Informant

“(a) OFFENSE.—A person is guilty of an offense if he knowingly causes bodily injury to another person or damages the property of another person for or because of:

“(1) any testimony given by a witness in an official proceeding; or

“(2) any information given by a person to a law enforcement officer.

“(b) GRADING.—An offense described in this section is a Class E felony.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if:

“(1) the official proceeding is a federal official proceeding;

“(2) the law enforcement officer is a federal public servant and the information relates to an offense over which federal jurisdiction exists;

“(3) the United States mail or a facility of interstate or foreign commerce is used in the planning, promotion, management, execution, consummation, or concealment of the offense, or in the distribution of the proceeds of the offense; or

“(4) movement of a person across a state or United States boundary occurs in the course of the planning, promotion, management, execution, consummation, or concealment of the offense, or in the course of the distribution of the proceeds of the offense.

“§ 1325. Tampering with Physical Evidence

“(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, or removes a record, document, or other object, regardless of its admissibility in evidence, with intent to impair its integrity or availability in an official proceeding.

“(b) DEFENSE PRECLUDED.—It is not a defense to a prosecution under this section that an official proceeding was not pending or about to be instituted.

1 “(c) GRADING.—An offense described in this section is a Class E
2 felony.

3 “(d) JURISDICTION.—There is federal jurisdiction over an offense
4 described in this section if the official proceeding is or would be a fed-
5 eral official proceeding.

6 **“§ 1326. Communicating with a Juror**

7 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
8 communicates in any way with a juror, or a member of a juror’s im-
9 mediate family, with intent improperly to influence the official action
10 of the juror.

11 “(b) GRADING.—An offense described in this section is a Class A
12 misdemeanor.

13 “(c) JURISDICTION.—There is federal jurisdiction over an offense
14 described in this section if the juror is a federal juror.

15 **“§ 1327. Monitoring Jury Deliberations**

16 “(a) OFFENSE.—A person is guilty of an offense if he intentionally :

17 “(1) records the proceedings of a grand or petit jury while such
18 jury is deliberating or voting; or

19 “(2) listens to or observes the proceedings of a grand or petit
20 jury of which he is not a member while such jury is deliberating or
21 voting.

22 “(b) DEFENSE.—It is a defense to a prosecution under subsection
23 (a) (1) that the actor was a grand or petit juror of the jury that was
24 deliberating or voting and that such juror was taking notes in connec-
25 tion with, and solely for the purpose of assisting him in the perform-
26 ance of, his official duties.

27 “(c) GRADING.—An offense described in this section is a Class B mis-
28 demeanor.

29 “(d) JURISDICTION.—There is federal jurisdiction over an offense
30 described in this section if the grand or petit jury is a federal jury.

31 **“§ 1328. Demonstrating to Influence a Judicial Proceeding**

32 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
33 influence another person in the discharge of his duties in a judicial
34 proceeding, he pickets, parades, displays a sign, uses a sound amplify-
35 ing device, or otherwise engages in a demonstration in, on the grounds
36 of, or within 200 feet of :

37 “(1) a building housing a court of the United States; or

38 “(2) a building occupied or used by such other person.

39 “(b) GRADING.—An offense described in this section is a Class B
40 misdemeanor.

1 “(c) JURISDICTION.—There is federal jurisdiction over an offense de-
2 scribed in this section if the judicial proceeding is a federal judicial
3 proceeding.

4 **“§ 1331. Criminal Contempt**

5 “(a) OFFENSE.—A person is guilty of an offense if, in contempt of
6 the authority of a court of the United States, he:

7 “(1) misbehaves in the presence of the court or so near thereto
8 as to obstruct the administration of justice;

9 “(2) disobeys or resists a lawful writ, process, order, rule, de-
10 cree, or command of the court; or

11 “(3) as an officer of the court, misbehaves in an official transac-
12 tion.

13 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a crim-
14 inal contempt proceeding under this section that the defendant’s con-
15 duct was legally privileged.

16 “(c) SUCCESSIVE PROSECUTIONS.—A criminal contempt proceeding
17 under this section is not a bar to a subsequent prosecution for an of-
18 fense under another section of this title if the conduct charged as crim-
19 inal contempt under this section also constitutes an offense under such
20 other section. In a subsequent prosecution the defendant shall receive
21 credit for any time spent in custody and any fine paid by him as a re-
22 sult of the prior criminal contempt proceeding.

23 “(d) GRADING.—An offense described in this section is a Class B
24 misdemeanor. Notwithstanding the provisions of section 2201, the
25 defendant may be sentenced to pay a fine in any amount deemed just by
26 the court if the criminal contempt is disobedience or resistance to the
27 court’s lawful temporary restraining order, preliminary or final in-
28 junction, or other final order other than for the payment of money.

29 **“§ 1332. Failing to Appear, to Produce Information, or to Be**
30 **Sworn**

31 “(a) OFFENSE.—A person is guilty of an offense if he fails to comply
32 with a lawful order:

33 “(1) to appear at a specified time and place to testify, or to
34 produce a record, document, or other object, in an official proceed-
35 ing;

36 “(2) to occupy or remain at the designated place from which
37 he is to testify in an official proceeding; or

38 “(3) to be sworn or make equivalent affirmation as a witness
39 in an official proceeding.

40 “(b) AFFIRMATIVE DEFENSES.—It is an affirmative defense to a pros-
41 ecution:

1 “(1) under this section that the defendant’s conduct was legal-
2 ly privileged; and

3 “(2) under subsection (a) (1) that the defendant was prevent-
4 ed from appearing at the specified time and place, or was unable
5 to produce the record, document, or other object because of cir-
6 cumstances to the existence of which he did not contribute in
7 reckless disregard of the requirement to appear or to produce the
8 record, document, or other object.

9 “(c) GRADING.—An offense described in this section is a Class E
10 felony.

11 “(d) JURISDICTION.—There is federal jurisdiction over an offense
12 described in this section if the official proceeding is a federal official
13 proceeding.

14 **“§ 1333. Refusing to Testify**

15 “(a) OFFENSE.—A person is guilty of an offense if he refuses:

16 “(1) to answer a question pertinent to the subject under in-
17 quiry in an official proceeding conducted under the authority of
18 Congress or of either House of Congress after the presiding of-
19 ficer has directed him to answer and advised him that his refusal
20 to do so might subject him to criminal prosecution; or

21 “(2) to answer a question in any other official proceeding after
22 a federal court or federal judge, or, in a proceeding before a
23 United States magistrate or referee in bankruptcy, the presiding
24 officer, has directed or ordered him to answer and advised him that
25 his refusal to do so might subject him to criminal prosecution.

26 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a pros-
27 ecution under this section that the defendant was legally privileged
28 to refuse to answer the question.

29 “(c) GRADING.—An offense described in this section is a Class E
30 felony.

31 “(d) JURISDICTION.—There is federal jurisdiction over an offense
32 described in this section if the official proceeding is a federal official
33 proceeding.

34 **“§ 1334. Certification for Prosecution under Section 1332 or**
35 **1333 in Which a Congressional Proceeding Is Involved**

36 “(a) CERTIFICATION REQUIREMENT.—With respect to an offense un-
37 der section 1332 or 1333 involving an official proceeding conducted
38 under the authority of Congress or of either House of Congress, a
39 statement of the facts constituting such offense may be reported to
40 either House of Congress while Congress is in session, or when Con-

gress is not in session, a statement of the facts constituting such offense may be reported to and filed with the President of the Senate or the Speaker of the House. If the report is made while Congress is in session and the appropriate House has so ordered, the President of the Senate or the Speaker of the House, as the case may be, shall certify, or if the report is made when Congress is not in session, such officer shall certify, the statement of facts under the seal of the appropriate House to the appropriate United States Attorney, who shall institute prosecution or bring the matter before a grand jury for its action.

“(b) **LACK OF CERTIFICATION A BAR.**—Failure to comply with the certification requirement of subsection (a) is a bar to prosecution. The defendant has the burden of proving such failure to comply by a preponderance of the evidence, and is entitled to have the issue tried and determined by the court out of the presence of the jury, if any.

“§ 1335. **Obstructing a Proceeding by Disorderly Conduct**

“(a) **OFFENSE.**—A person is guilty of an offense if he knowingly obstructs, impairs, or perverts an official proceeding by means of noise, or violent or tumultuous behavior or disturbance, or otherwise.

“(b) **GRADING.**—An offense described in this section is a Class A misdemeanor.

“(c) **JURISDICTION.**—There is federal jurisdiction over an offense described in this section if the official proceeding is a federal official proceeding.

“§ 1336. **Disobeying a Judicial Order**

“(a) **OFFENSE.**—A person is guilty of an offense if he disobeys or resists a lawful temporary restraining order, preliminary or final injunction, or other final order other than for the payment of money, of a court of the United States.

“(b) **GRADING.**—An offense described in this section is a Class E felony. Notwithstanding the provisions of section 2201, the defendant may be sentenced to pay a fine in any amount deemed just by the court.

“§ 1341. **Perjury**

“(a) **OFFENSE.**—A person is guilty of an offense if, under oath or equivalent affirmation in an official proceeding, he knowingly:

“(1) makes a material false statement; or

“(2) affirms the truth of a material false statement previously made.

“(b) **GRADING.**—An offense described in this section is a Class D felony.

1 “(c) JURISDICTION.—There is federal jurisdiction over an offense
2 described in this section if the official proceeding is a federal official
3 proceeding.

4 **“§ 1342. False Swearing**

5 “(a) OFFENSE.—A person is guilty of an offense if, under oath or
6 equivalent affirmation in an official proceeding, he knowingly :

7 “(1) makes a false statement ; or

8 “(2) affirms the truth of a false statement previously made.

9 “(b) GRADING.—An offense described in this section is a Class A
10 misdemeanor.

11 “(c) JURISDICTION.—There is federal jurisdiction over an offense
12 described in this section if the official proceeding is a federal official
13 proceeding.

14 **“§ 1343. Making a False Statement**

15 “(a) OFFENSE.—A person is guilty of an offense if :

16 “(1) in fact, in a government matter or a government record,
17 he :

18 “(A) knowingly makes a material false statement ;

19 “(B) makes a material false statement in reckless disregard
20 of its truth or falsity ;

21 “(C) knowingly omits or conceals a material fact in a writ-
22 ten application for a pecuniary or other benefit ;

23 “(D) knowingly submits or invites reliance on a material
24 writing or recording which is false, forged, altered, or other-
25 wise lacking in authenticity ;

26 “(E) knowingly submits or invites reliance on a sample,
27 specimen, map, photograph, boundarymark, or other object
28 which is misleading in a material respect ; or

29 “(F) knowingly uses a trick, scheme, or device which is
30 misleading in a material respect ;

31 “(2) in a credit institution record with intent to deceive or harm
32 the government or a person, he, as an agent of such credit institu-
33 tion, engages in any conduct described in subparagraphs (A)
34 through (F) of paragraph (1) ; or

35 “(3) in a statement intended to influence the action of a credit
36 institution, he engages in any conduct described in subparagraphs
37 (A) through (F) of paragraph (1).

38 “(b) DEFENSE.—It is a defense to a prosecution under this section
39 that the statement was given to a law enforcement officer during the

1 course of an investigation into the possible commission of an offense
2 and:

3 “(1) the statement was oral; or

4 “(2) the statement was a written denial, unaccompanied by
5 another false statement, that the declarant committed or par-
6 ticipated in the commission of the offense

7 unless the statement was given in an official proceeding or the declarant
8 was otherwise under a legal duty to make the statement.

9 “(c) GRADING.—An offense described in this section is a Class E
10 felony.

11 “(d) JURISDICTION.—There is federal jurisdiction over an offense
12 described in this section if:

13 “(1) the government is the government of the United States;

14 “(2) the government is a state, local, or foreign government
15 and the falsity constituting the offense is that the declarant is
16 a citizen of the United States; or

17 “(3) the credit institution is a national credit institution.

18 **“§ 1344. Making a False Report**

19 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

20 “(1) makes a false report to a law enforcement officer that a
21 crime has been committed or that a particular person is implicated
22 in the commission of a crime; or

23 “(2) makes a false report to a law enforcement officer, a fire-
24 man, or any other public servant responsible for averting or deal-
25 ing with emergencies involving public safety, that an incident
26 has occurred which calls for an emergency response.

27 “(b) GRADING.—An offense described in this section is a Class A
28 misdemeanor.

29 “(c) JURISDICTION.—There is federal jurisdiction over an offense
30 described in this section if the law enforcement officer, fireman, or other
31 public servant is a federal public servant.

32 **“§ 1345. Tampering with a Government Record**

33 “(a) OFFENSE.—A person is guilty of an offense if without authority
34 he knowingly alters, destroys, mutilates, conceals, removes, or other-
35 wise impairs the integrity or availability of a government record.

36 “(b) GRADING.—An offense described in this section is a Class E
37 felony.

38 “(c) JURISDICTION.—There is federal jurisdiction over an offense

described in this section if the government record is a federal government record.

§ 1346. General Provisions for Sections 1341 through 1345

“(a) DEFINITIONS.—As used in sections 1341 through 1345:

“(1) ‘credit institution record’ means a record, book, or statement of a credit institution kept in the usual course of business by an agent of such institution;

“(2) ‘government matter’ means a matter within the jurisdiction, including investigative jurisdiction, of a government agency;

“(3) ‘government record’ means a record, document, or other object:

“(A) belonging to, or received or kept by, a government for information or record purposes; or

“(B) required to be kept by a person pursuant to a statute or a regulation, rule, or order issued pursuant thereto;

“(4) ‘statement’ means an oral or written declaration or representation, including a declaration or representation of opinion, belief, or other state of mind; for purposes of sections 1341 and 1342, a written statement made ‘under oath or equivalent affirmation’ includes a written statement which, with the declarant’s knowledge, purports to have been made under oath or equivalent affirmation.

“(b) PROOF.—

“(1) Under sections 1341 and 1342, proof beyond a reasonable doubt is sufficient for conviction. Proof of the falsity of a statement need not be made by any particular number of witnesses or by documentary, direct, or any other particular kind of evidence.

“(2) Under sections 1341 and 1343, a falsification, omission, concealment, forgery, alteration, or other misleading matter, is material, regardless of the admissibility of the statement or object under the rules of evidence, if it could have impaired, affected, impeded, or otherwise influenced the course, outcome, or disposition of the matter in which it is made, or if it could have impaired the integrity of the record in question. Materiality in a given factual situation is a question of law.

“(3) Under sections 1341 and 1342, where, in one or more official proceedings, a person under oath or equivalent affirmation makes or affirms statements which are inconsistent to the degree that one of them is necessarily false, both having been made within the applicable period of limitations, the indictment, informa-

tion, or other charge may set forth the statements in a single count alleging that one or the other was knowingly false. Proof that the defendant made such statements constitutes a prima facie case that one or the other of the statements was knowingly false, and is sufficient for conviction. Under section 1341, both such statements must be material.

“(c) DEFENSE.—It is a defense to a prosecution under sections 1341 and 1342 that the actor clearly and expressly retracted the falsification in the course of the same official proceeding in which it was made if, in fact, he did so before it became manifest that the falsification had been or would be exposed and before the falsification substantially impaired, affected, impeded, or otherwise influenced the course, outcome, or disposition of the official proceeding or a government matter ancillary to the official proceeding.

“(d) DEFENSES PRECLUDED.—

“(1) It is not a defense to a prosecution under section 1341 or 1342 that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not authorized to make the statement.

“(2) It is not a defense to a prosecution under section 1341 or 1343 that the declarant believed the falsification, omission, concealment, forgery, alteration, or other misleading matter, to be immaterial.

“§ 1351. Bribery

“(a) OFFENSE.—A person is guilty of an offense if:

“(1) he knowingly offers, gives, or agrees to give to a public servant; or

“(2) as a public servant, he knowingly solicits, demands, accepts, or agrees to accept from another person anything of value in return for an agreement or understanding that the recipient's official action as a public servant will be influenced thereby, or that the recipient will violate a legal duty as a public servant.

“(b) GRADING.—An offense described in this section is a Class C felony.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if:

“(1) the offense is committed within the special jurisdiction of the United States;

1 “(2) the official action or legal duty involved is that of a federal
2 public servant;

3 “(3) the United States mail or a facility of interstate or foreign
4 commerce is used in the planning, promotion, management, exe-
5 cution, consummation, or concealment of the offense, or in the
6 distribution of the proceeds of the offense;

7 “(4) movement of a person across a state or United States
8 boundary occurs in the course of the planning, promotion, man-
9 agement, execution, consummation, or concealment of the offense,
10 or in the course of the distribution of the proceeds of the offense;
11 or

12 “(5) the offense occurs during the commission of or during
13 the immediate flight from commission of an offense, over which
14 federal jurisdiction exists, which is described in section 1403
15 (Liquor and Related Tax Violations), 1722 (Extortion), 1724
16 (Loansharking), 1821 (Trafficking in Heroin or Morphine), 1822
17 (Trafficking in Drugs), 1831 (Engaging in a Gambling Business),
18 1832 (Facilitating or Profiting from Gambling), or 1841 (Con-
19 ducting a Prostitution Business).

20 **“§ 1352. Graft**

21 “(a) OFFENSE.—A person is guilty of an offense if:

22 “(1) he knowingly offers, gives, or agrees to give to a public
23 servant or former public servant; or

24 “(2) as a public servant or former public servant he knowingly
25 solicits, demands, accepts, or agrees to accept from another person
26 anything of pecuniary value for or because of an official action or a
27 legal duty performed or to be performed, or a legal duty violated or
28 to be violated by the public servant or former public servant.

29 “(b) GRADING.—An offense described in this section is a Class E
30 felony.

31 “(c) JURISDICTION.—There is federal jurisdiction over an offense
32 described in this section in a circumstance set forth in section 1351(c).

33 **“§ 1353. Trading in Government Assistance**

34 “(a) OFFENSE.—A person is guilty of an offense if:

35 “(1) he knowingly offers, gives, or agrees to give to a public
36 servant; or

37 “(2) as a public servant he solicits, demands, accepts, or agrees
38 to accept from another person

1 anything of pecuniary value as compensation for advice or other
2 assistance in preparing or promoting a bill, contract, claim, or other
3 matter which is or may become subject to such public servant's official
4 action.

5 “(b) GRADING.—An offense described in this section is a Class A
6 misdemeanor.

7 “(c) JURISDICTION.—There is federal jurisdiction over an offense
8 described in this section if the public servant is a federal public servant.

9 **“§ 1354. Trading in Special Influence**

10 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

11 “(1) offers, gives, or agrees to give to another person; or

12 “(2) solicits, demands, accepts, or agrees to accept from an-
13 other person

14 anything of pecuniary value for exerting, or causing another person
15 to exert, special influence upon a public servant with respect to his
16 official action or legal duty as a public servant.

17 “(b) DEFINITION.—As used in this section, the term ‘special in-
18 fluence’ means influence by reason of a relationship to the public serv-
19 ant by common ancestry or by marriage, or by reason of position as
20 a public servant or as a political party official.

21 “(c) GRADING.—An offense described in this section is a Class E
22 felony.

23 “(d) JURISDICTION.—There is federal jurisdiction over an offense
24 described in this section if the official action or legal duty involved is
25 that of a federal public servant.

26 **“§ 1355. Trading in Public Office**

27 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

28 “(1) offers, gives, or agrees to give to another person; or

29 “(2) solicits, demands, accepts, or agrees to accept from an-
30 other person

31 anything of pecuniary value as consideration for approval, disap-
32 approval, or assistance by a public servant or political party official in
33 the appointment, employment, advancement, or retention of any per-
34 son as a public servant.

35 “(b) GRADING.—An offense described in this section is a Class A
36 misdemeanor.

37 “(c) JURISDICTION.—There is federal jurisdiction over an offense
38 described in this section if the position involved is that of a federal
39 public servant.

1 **“§ 1356. Speculating on Official Action or Information**

2 “(a) OFFENSE.—A person is guilty of an offense if as a public
3 servant, or within one year after his service as a public servant termi-
4 nates, and in contemplation of official action by himself as a public
5 servant or by an agency with which he is or has been serving as a
6 public servant, or in reliance on information to which he has or had
7 access only in his capacity as a public servant, he :

8 “(1) knowingly acquires a pecuniary interest in any property,
9 transaction, or enterprise which may be affected by such official
10 action or information ; or

11 “(2) provides information with intent to aid another person to
12 acquire such an interest.

13 “(b) GRADING.—An offense described in this section is a Class A
14 misdemeanor.

15 “(c) JURISDICTION.—There is federal jurisdiction over an offense de-
16 scribed in this section if the public servant is or was a federal public
17 servant or the agency is a federal government agency.

18 **“§ 1357. Tampering with a Public Servant**

19 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
20 uses force, threat, intimidation, or deception to influence a public
21 servant in the exercise of his official action or in the performance of
22 his legal duty.

23 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prose-
24 cution under this section that the threat was of lawful conduct and was
25 used solely to influence the public servant to perform his official action
26 or legal duty properly.

27 “(c) GRADING.—An offense described in this section is a Class E
28 felony.

29 “(d) JURISDICTION.—There is federal jurisdiction over an offense
30 described in this section if the official action or legal duty involved is
31 that of a federal public servant.

32 **“§ 1358. Retaliating against a Public Servant**

33 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
34 causes bodily injury to another person or damages the property of an-
35 other person for or because of the performance of an official duty by a
36 public servant, or because of the status of a person as a public servant.

37 “(b) GRADING.—An offense described in this section is a Class E
38 felony.

39 “(c) JURISDICTION.—There is federal jurisdiction over an offense

1 described in this section if the public servant is a federal public servant
2 who is:

- 3 “(1) a United States official;
- 4 “(2) a judge;
- 5 “(3) a juror;
- 6 “(4) a law enforcement officer;
- 7 “(5) an employee of a penal or correctional institution; or
- 8 “(6) a person designated for coverage under this section in
- 9 regulations promulgated by the Attorney General.

10 **“§ 1359. Definitions for Sections 1351 Through 1358**

11 “(a) As used in sections 1351 through 1358:

12 “(1) ‘anything of value’ and ‘anything of pecuniary value’ do
13 not include:

14 “(A) salary, wages, fees, or other compensation paid by
15 the government in behalf of which the official action or legal
16 duty is performed;

17 “(B) concurrence in official action in the course of legiti-
18 mate compromise among public servants; or

19 “(C) support, including a vote, in any primary, special, or
20 general election campaign solicited by a candidate solely by
21 means of representation of his position on a public issue;

22 “(2) ‘political party official’ means a person who holds a posi-
23 tion or office in a political party, whether by election, appoint-
24 ment, or otherwise;

25 “(3) ‘public servant’ includes a person who was not qualified
26 to act, whether because he had not yet assumed office or lacked
27 authority or jurisdiction, or because of any other reason.

28 “(b) As used in sections 1351 through 1356, ‘federal public servant’
29 includes a District of Columbia public servant.

30 **“§ 1361. Impersonating an Official**

31 “(a) OFFENSE.—A person is guilty of an offense if he pretends to
32 be a public servant or a foreign official and purports to exercise the
33 authority of such public servant or foreign official.

34 “(b) DEFENSE PRECLUDED.—It is not a defense to a prosecution
35 under this section that the pretended capacity did not exist or that the
36 pretended authority could not legally or otherwise have been exercised
37 or conferred.

38 “(c) GRADING.—An offense described in this section is a Class E
39 felony.

1 “(d) JURISDICTION.—There is federal jurisdiction over an offense
2 described in this section if:

3 “(1) the pretended capacity or authority is that of a federal
4 public servant; or

5 “(2) the pretended capacity or authority is that of a foreign
6 official and the offense is committed within the United States or
7 the special jurisdiction of the United States.

8 **“Chapter 14.—OFFENSES INVOLVING INTERNAL**
9 **REVENUE AND CUSTOMS**

“Sec.

“1401. Tax Evasion.

“1402. Disregarding a Tax Obligation or Falsely Claiming an Exemption.

“1403. Definitions for Sections 1401 and 1402.

“1411. Liquor and Related Tax Violations.

“1421. Smuggling.

“1422. Receiving Smuggled Property.

“1423. General Provisions for Sections 1421 and 1422.

10 **“§ 1401. Tax Evasion**

11 “(a) OFFENSE.—A person is guilty of an offense if the intent to
12 evade:

13 “(1) any tax, he files or causes the filing of a tax return which
14 understates the tax;

15 “(2) payment of any tax which is or may become due, he re-
16 moves or conceals assets;

17 “(3) payment of any tax, he fails to account for or pay over
18 when due taxes previously collected or withheld, or taxes received
19 from another person with the understanding that they will be
20 paid over to the United States;

21 “(4) any tax or the payment of any tax, he alters, destroys,
22 mutilates, removes, or tampers with any property in the care,
23 custody, or control of the United States;

24 “(5) any tax then due, he fails to file a tax return when due; or

25 “(6) any tax or the payment of any tax, he otherwise acts in
26 any manner to evade such tax or payment.

27 “(b) GRADING.—An offense described in this section is a Class D
28 felony.

29 **“§ 1402. Disregarding a Tax Obligation or Falsely Claiming an**
30 **Exemption**

31 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

32 “(1) fails to file a tax return or information return when due;

33 “(2) engages in an occupation or enterprise without having
34 registered or purchased a stamp required of persons engaged in

1 such an occupation or enterprise under the Internal Revenue Code
2 of 1954;

3 “(3) fails to withhold or collect any tax which he is required to
4 withhold or collect under the Internal Revenue Code of 1954;

5 “(4) after having received the notice provided for under sec-
6 tion 7512(a) of the Internal Revenue Code of 1954 (26 U.S.C.
7 7512(a)), fails to deposit collected taxes in a special bank account
8 as provided under section 7512(b) of the Internal Revenue Code
9 of 1954 (26 U.S.C. 7512(b)), or after having deposited funds in
10 such an account, pays any of them to anyone other than the
11 United States or an authorized agent thereof;

12 “(5) fails to furnish a true statement to any employee regard-
13 ing tax withheld as required under section 6051 of the Internal
14 Revenue Code of 1954 (26 U.S.C. 6051); or

15 “(6) falsely claims a personal exemption in an income tax re-
16 turn or a withholding exemption certificate required to be fur-
17 nished under section 3402(f) of the Internal Revenue Code of
18 1954 (26 U.S.C. 3402(f)).

19 “(b) GRADING.—An offense described in this section is a Class A
20 misdemeanor.

21 **“§ 1403. Definitions for Sections 1401 and 1402**

22 “As used in sections 1401 and 1402:

23 “(a) ‘payment’ includes collection;

24 “(b) ‘tax’ means a tax imposed by a federal statute, an exaction
25 denominated a ‘tax’ by a federal statute, and any penalty, addition
26 to tax, additional amount, or interest thereon, but does not include
27 a tariff or customs duty, or a toll, levy, or charge which is not de-
28 nominated a ‘tax’ by a federal statute;

29 “(c) ‘tax return’ means a written report of a taxpayer’s tax
30 obligation which is required to be filed by a federal statute, or a
31 regulation, rule, or order issued pursuant thereto; including a
32 report of taxes withheld or collected, an income tax return, an
33 estate or gift return, an excise tax return, and any other tax return
34 of an individual, corporation, or other entity required to file a
35 return and pay a tax in conjunction with a tax return; but not in-
36 cluding an interim report, information return, or return of esti-
37 mated tax.

38 **“§ 1411. Liquor and Related Tax Violations**

39 “(a) OFFENSE.—A person is guilty of an offense if he violates:

1 “(1) section 5601(a), 5602, 5603(a), 5607, 5661(a), 5671, or 5689
2 of the Internal Revenue Code of 1954, as amended (26 U.S.C.
3 5601(a), 5602, 5603(a), 5607, 5661(a), 5671, or 5689) ; or

4 “(2) section 5604(a), 5605, 5608, 5682, 5691(a), or 5762(a) of
5 the Internal Revenue Code of 1954, as amended (26 U.S.C. 5604
6 (a), 5605, 5608, 5682, 5691(a), or 5762(a)).

7 “(b) PROOF.—Proof of a matter which creates a presumption under
8 the provisions of the Internal Revenue Code of 1954, as amended; in
9 regard to an element of a violation enumerated in subsection (a),
10 creates the same presumption in a prosecution for such violation under
11 this section.

12 “(c) GRADING.—An offense described in this section is:

13 “(1) a Class D felony in the circumstances set forth in subsec-
14 tion (a) (1) ;

15 “(2) a Class E felony in the circumstances set forth in subsection
16 (a) (2).

17 **“§ 1421. Smuggling**

18 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

19 “(1) introduces an object into the United States the introduc-
20 tion of which a federal statute, or a regulation, rule, or order
21 issued pursuant thereto:

22 “(A) prohibits absolutely ; or

23 “(B) prohibits conditionally and all conditions for its in-
24 troduction into the United States have not been complied
25 with ; or

26 “(2) evades assessment or payment when due of the customs
27 duty upon an object being introduced into the United States ; or

28 “(3) evades an examination by the government of an object
29 being introduced into the United States.

30 “(b) GRADING.—An offense described in this section is:

31 “(1) a Class felony if:

32 “(A) the value of the object, or the duty which was due
33 or which would have been due on the object, exceeds \$500 ;

34 “(B) introduction of the object is prohibited, either abso-
35 lutely or conditionally, because it may cause, or may be used
36 to cause bodily injury or property damage ;

37 “(2) a class A misdemeanor if the value of the object, or the
38 duty which was due or which would have been due on the object,
39 exceeds \$100 but is not more than \$500 ;

40 “(3) a Class B misdemeanor in any other case.

1 Notwithstanding the grading provisions of this subsection, if the sta-
 2 tute regulating or prohibiting introduction of the object provides a
 3 lesser penalty for the same conduct, the lesser penalty applies.

4 **“§ 1422. Receiving Smuggled Property**

5 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
 6 receives, buys, possesses, retains, conceals, or disposes of an object
 7 unlawfully introduced into the United States, such introduction hav-
 8 ing been, in fact, in violation of section 1421.

9 “(b) GRADING.—An offense described in this section is an offense of
 10 the same class as that specified in section 1421(b) for the smuggling of
 11 the same kind of object.

12 **“§ 1423. General Provisions for Sections 1421 and 1422**

13 “(a) DEFINITIONS.—As used in sections 1421 and 1422:

14 “(1) ‘introduces’ and variants thereof mean imports, trans-
 15 ports, or brings into, or lands in, the United States from outside
 16 the United States or from customs custody or control;

17 “(2) ‘object’ includes any article, good, ware, and merchandise,
 18 whether animate or inanimate;

19 “(3) ‘United States’ does not include the Canal Zone, Virgin
 20 Islands, American Samoa, Wake Island, Midway Islands, King-
 21 man Reef, Johnston Island, or Guam, unless otherwise provided
 22 by the statute regulating or prohibiting introduction of the object.

23 “(b) PROOF.—Possession of an object recently smuggled into the
 24 United States permits the inference that the person in possession knew
 25 it had been smuggled or in some way participated in its smuggling.

26 “(c) DETERMINING DUTY.—Smugglings committed pursuant to one
 27 scheme or course of conduct may be charged as one offense, and the
 28 value of, or the duty owing on the objects introduced may be aggre-
 29 gated in determining the grade of the offense.

30 **“Chapter 15.—OFFENSES INVOLVING CIVIL RIGHTS,**
 31 **ELECTIONS, AND PRIVATE COMMUNICATIONS**

‘Sec.

“1501. Interfering with Civil Rights.

“1502. Interfering with Civil Rights under Color of Law.

“1511. Interfering with an Election, Federal Activity, or Federal Employment.

“1512. Discriminating in Public Education, State Activities, Employment, Pub-
 lic Accommodations, Housing, or Travel.

“1513. Interfering with Speech or Assembly Related to Civil Rights Activities.

“1521. Obstructing an Election.

“1522. Obstructing Registration.

“1523. Interfering with a Federal Benefit for a Political Purpose.

“1524. Misusing Authority Over Personnel for a Political Purpose.

“1525. Soliciting a Political Contribution by a Federal Public Servant or in a
 Federal Building.

“1526. Political Contribution by an Agent of a Foreign Principal.

"1527. Definitions for Sections 1521 through 1526.

"1531. Intercepting Mail.

"1532. Intercepting a Wire or Oral Communication.

"1533. Trafficking in an Intercepting Device.

"1534. Definitions for Sections 1531 through 1533.

1 **"§ 1501. Interfering with Civil Rights**

2 **"(a) OFFENSE.**—A person is guilty of an offense if he knowingly de-
3 prives another person of, or injures, oppresses, threatens, or intimi-
4 dates another person in, the free exercise or enjoyment of, or because
5 of his having so exercised, any right, privilege, or immunity secured
6 to him by the Constitution or laws of the United States.

7 **"(b) GRADING.**—An offense described in this section is a Class A
8 misdemeanor.

9 **"§ 1502. Interfering with Civil Rights under Color of Law**

10 **"(a) OFFENSE.**—A person is guilty of an offense if, while acting
11 under color of law, he knowingly engages in any conduct which, in fact,
12 constitutes an offense under any section in chapter 16 or 17, and there-
13 by, in fact, deprives another of any right, privilege, or immunity
14 secured to such person by the Constitution or laws of the United
15 States.

16 **"(b) PROOF.**—Whether the deprivation concerns a right, privilege,
17 or immunity secured by the Constitution or laws of the United States
18 is a question of law.

19 **"(c) GRADING.**—An offense described in this section is a Class A
20 misdemeanor.

21 **"§ 1511. Interfering with an Election, Federal Activity, or Fed-**
22 **eral Employment**

23 **"(a) OFFENSE.**—A person is guilty of an offense if, by force or threat
24 of force, he intentionally injures, intimidates, or interferes with an-
25 other person because such other person is or has been, or in order to
26 order to intimidate any person from:

27 **"(1)** voting or qualifying to vote, qualifying or campaigning
28 as a candidate for elective office, or qualifying or acting as a poll
29 watcher or other election official, in a primary, special, or general
30 election;

31 **"(2)** participating in or enjoying the benefits of a program,
32 service, facility, or activity provided by, administered by, or whol-
33 ly or partly financed by, the United States;

34 **"(3)** serving as a grand or petit juror in a court of the United
35 States or attending court in connection with possible service as
36 such a grand or petit juror;

1 “(4) applying for or enjoying employment, or a perquisite
2 thereof, by an agency of the United States;

3 “(5) affording another person or class of persons opportunity
4 or protection to participate in any benefit or activity described in
5 this section; or

6 “(6) aiding or encouraging another person or class of persons
7 to participate in any benefit or activity described in this section.

8 “(b) GRADING.—An offense described in this section is a Class A
9 misdemeanor.

10 **“§ 1512. Discriminating in Public Education, State Activities,**
11 **Employment, Public Accommodations, Housing, or**
12 **Travel**

13 “(a) OFFENSE.—A person is guilty of an offense if, by force or
14 threat of force, he intentionally injures, intimidates, or interferes with
15 another person:

16 “(1) because of such other person’s race, color, religion, or na-
17 tional origin and because such other person is or has been, or in
18 order to intimidate any person from:

19 “(A) enrolling in or attending a public school or public
20 college;

21 “(B) participating in or enjoying a benefit, service, privi-
22 lege, program, facility, or activity provided or administered
23 by a state or subdivision thereof;

24 “(C) serving as a grand or petit juror in a court of a state
25 or attending court in connection with possible service as such
26 a grand or petit juror;

27 “(D) enjoying the goods, services, facilities, privileges, ad-
28 vantages, or accommodations of:

29 “(i) an inn, hotel, motel, or other establishment which
30 provides lodging to transient guests;

31 “(ii) a restaurant, cafeteria, lunchroom, lunch coun-
32 ter, soda fountain, or other facility which serves the
33 public and which is principally engaged in selling food
34 or beverages for consumption on the premises;

35 “(iii) a gasoline station;

36 “(iv) a motion picture house, theater, concert hall,
37 sports arena, stadium, or any other place of exhibition
38 or entertainment which serves the public; or

39 “(v) any other establishment which serves the public,
40 which is located within the premises of any of the afore-

1 said establishments or within the premises of which is
2 physically located any of the aforesaid establishments,
3 and which holds itself out as serving patrons of such
4 establishments;

5 “(E) applying for or enjoying employment, or a per-
6 quisite thereof, by a private employer or by an agency of a
7 state or subdivision thereof, or joining or using the services
8 or advantages of a labor organization, hiring hall, or em-
9 ployment agency;

10 “(F) selling, purchasing, renting, financing, or occupy-
11 ing a dwelling; or contracting or negotiating for the sale,
12 purchase, rental, financing or occupation of a dwelling; or
13 applying for or participating in a service, organization, or
14 facility relating to the business of selling or renting dwell-
15 ings; or

16 “(G) traveling in or using a facility of interstate com-
17 merce, or using a vehicle, terminal, or facility of a common
18 carrier by motor, rail, water, or air; or

19 “(2) because such other person is or has been, or in order to
20 intimidate any person from:

21 “(A) affording another person or class of persons oppor-
22 tunity or protection to participate without discrimination
23 on account of race, color, religion, or national origin in
24 any benefit or activity described in this section; or

25 “(B) aiding or encouraging another person or class of
26 persons to participate without discrimination on account
27 of race, color, religion, or national origin in any benefit or
28 activity described in this section.

29 “(b) DEFENSE.—It is a defense to a prosecution under subsection
30 (a) (1) (D) (i) that:

31 “(1) the defendant was the proprietor of the establishment
32 involved or an employee acting on behalf of the proprietor;

33 “(2) the establishment was located within a building con-
34 taining not more than five rooms for rent or hire; and

35 “(3) the building was occupied by the proprietor as his resi-
36 dence.

37 “(c) GRADING.—An offense described in this section is a Class A
38 misdemeanor.

1 **“§ 1513. Interfering With Speech or Assembly Related to Civil**
2 **Rights Activities**

3 “(a) OFFENSE.—A person is guilty of an offense if, by force or threat
4 of force, he intentionally injures, intimidates, or interferes with an-
5 other person because he is or has been, or in order to intimidate him
6 or any other person from, participating in speech or assembly opposing
7 any denial of opportunity to participate :

8 “(1) in any benefit or activity described in section 1511; or

9 “(2) in any benefit or activity described in section 1512 without
10 discrimination on account of race, color, religion, or national
11 origin.

12 “(b) GRADING.—An offense described in this section is a Class A
13 misdemeanor.

14 **“§ 1521. Obstructing an Election**

15 “(a) OFFENSE.—A person is guilty of an offense if, in connection
16 with a primary, general, or special election to nominate or elect a candi-
17 date for federal office, he knowingly :

18 “(1) obstructs, impairs, or perverts the lawful conduct of such
19 election ;

20 “(2) offers, gives, or agrees to give anything of value to another
21 person for or because of any person’s voting, refraining from
22 voting, or voting for or against a candidate ; or

23 “(3) solicits, demands, accepts, or agrees to accept anything of
24 value for or because of any person’s voting, refraining from voting,
25 or voting for or against a candidate. •

26 “(b) GRADING.—An offense described in this section is a Class E
27 felony.

28 **“§ 1522. Obstructing Registration**

29 “(a) OFFENSE.—A person is guilty of an offense if, in connection
30 with registration to vote at a primary, general, or special election to
31 nominate or elect a candidate for federal office, he knowingly :

32 “(1) obstructs, impairs, or perverts the lawful conduct of such
33 registration ;

34 “(2) offers, gives, or agrees to give anything of value to another
35 person for or because of any person’s registering to vote ;

36 “(3) solicits, demands, accepts, or agrees to accept anything of
37 value for or because of any person’s registering to vote ; or

1 “(4) gives false information to establish his eligibility to vote.

2 “(b) GRADING.—An offense described in this section is a Class A
3 misdemeanor.

4 **“§ 1523. Interfering with a Federal Benefit for a Political**
5 **Purpose**

6 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
7 interfere with, restrain, or coerce another person in the exercise of his
8 right to vote at a primary, general, or special election to nominate or
9 elect a candidate for federal, state, or local elective office, he withholds
10 or threatens to withhold from any other person, or deprives or threat-
11 ens to deprive any other person of, the benefit of a federal program or
12 federally-supported program, or a federal government contract.

13 “(b) GRADING.—An offense described in this section is a Class A
14 misdemeanor.

15 **“§ 1524. Misusing Authority over Personnel for a Political**
16 **Purpose**

17 “(a) OFFENSE.—A person is guilty of an offense if, as a federal public
18 servant, he promotes, fails to promote, demotes, or discharges another
19 federal public servant, or in any manner changes or promises or threat-
20 ens to change the official position or compensation of another federal
21 public servant, for or because of any person's giving, withholding, or
22 neglecting to make a political contribution.

23 “(b) GRADING.—An offense described in this section is a Class A
24 misdemeanor.

25 **“§ 1525. Soliciting a Political Contribution by a Federal Public**
26 **Servant or in a Federal Building**

27 “(a) OFFENSE.—A person is guilty of an offense if:

28 “(1) as a federal public servant, he knowingly:

29 “(A) solicits a political contribution from another federal
30 public servant; or

31 “(B) makes a political contribution to another federal pub-
32 lic servant in response to a solicitation; or

33 “(2) he knowingly solicits or receives a political contribution
34 in a federal building or facility.

35 “(b) GRADING.—An offense described in this section is a Class A
36 misdemeanor.

37 **“§ 1526. Political Contribution by an Agent of a Foreign Principal**

38 “(a) OFFENSE.—A person is guilty of an offense if:

39 “(1) as an agent of a foreign principal, he knowingly makes

1 or promises to make a political contribution; or

2 “(2) he knowingly solicits, accepts, or receives a political con-
3 tribution from an agent of a foreign principal, or from a foreign
4 principal or government.

5 “(b) GRADING.—An offense described in this section is a Class E
6 felony.

7 **“§ 1527. Definitions for Sections 1521 through 1526**

8 “As used in sections 1521 through 1526:

9 “(a) ‘anything of value’ does not include non-partisan physical
10 activities or services to facilitate registration or voting;

11 “(b) ‘federal office’ means the office of the President or Vice
12 President of the United States, or Senator or Representative in,
13 or Delegate or Resident Commissioner to, the Congress of the
14 United States;

15 “(c) ‘foreign principal’ has the meaning set forth in section 1 of
16 the Foreign Agents Registration Act of 1938, as amended (22
17 U.S.C. 611), but does not include a citizen of the United States;

18 “(d) ‘political contribution’ means anything of pecuniary value
19 used or to be used for the nomination or election of any person
20 to federal, state, or local elective office.

21 **“§ 1531. Intercepting Mail**

22 “(a) OFFENSE.—A person is guilty of an offense if he intentionally:

23 “(1) opens mail addressed to another person, or reads such
24 mail, without the prior consent of the sender or the addressee; or

25 “(2) discloses or uses the contents of mail addressed to another
26 person knowing that such mail has been opened or read without
27 the consent of the sender or the addressee.

28 “(b) DEFINITION.—As used in this section, ‘mail’ does not include
29 a post card, newspaper, magazine, circular, or advertising matter.

30 “(c) GRADING.—An offense described in this section is a Class E
31 felony.

32 **“§ 1532. Intercepting a Wire or Oral Communication**

33 “(a) OFFENSE.—A person is guilty of an offense if he intentionally:

34 “(1) intercepts a wire or oral communication, by means of
35 an electronic, mechanical, or other device, without the prior con-
36 sent of a party to the communication; or

37 “(2) discloses or uses the contents of a wire or oral communi-
38 cation, knowing that such communication has been intercepted
39 by means of an electronic, mechanical, or other device without
40 the prior consent of a party to the communication.

1 “(b) **DEFENSE.**—It is a defense to a prosecution under this section
2 that the defendant was an employee of a communications common
3 carrier who, in the usual course of his employment, intercepted,
4 disclosed, or used a wire communication being transmitted over the
5 facilities of the carrier, while engaged in service-observing or random
6 monitoring for mechanical or service quality control checks, or while
7 engaged in any other activity which is a necessary incident to the
8 rendition of the carrier’s service or to the protection of the carrier’s
9 rights or property.

10 “(c) **GRADING.**—An offense described in this section is a Class E
11 felony.

12 “(d) **JURISDICTION.**—There is federal jurisdiction over an offense
13 described in this section pursuant to the special findings of Congress
14 expressed in section 801 of the Omnibus Crime Control and Safe
15 Streets Act of 1968 (Public Law 90-351).

16 **“§ 1533. Trafficking in an Intercepting Device**

17 “(a) **OFFENSE.**—A person is guilty of an offense if he:

18 “(1) manufactures or traffics in an electronic, mechanical, or
19 other device, knowing that its design renders it primarily useful
20 for surreptitious interception of wire or oral communications; or

21 “(2) advertises an electronic, mechanical, or other device
22 through a newspaper, magazine, handbill, or other publication, or
23 through a radio or television communication, knowing:

24 “(A) that the design of the device renders it primarily use-
25 ful for surreptitious interception of wire or oral communica-
26 tions; or

27 “(B) that the advertisement promotes the use of the de-
28 vice for, and that it can be used for, surreptitious interception
29 of wire or oral communications.

30 “(b) **DEFENSES.**—It is a defense to a prosecution under this section
31 that the defendant was:

32 “(1) a communications common carrier, or an employee of such
33 a carrier, or a person under contract with such a carrier, acting
34 in the usual course of the business of such a carrier; or

35 “(2) a person under contract with the government of the United
36 States or of a state, acting under such contract.

37 “(c) **GRADING.**—An offense described in this section is a Class E
38 felony.

39 “(d) **JURISDICTION.**—There is federal jurisdiction over an offense
40 described in this section if:

1 “(1) the offense is committed within the special jurisdiction of
2 the United States;

3 “(2) the device which is the subject of the offense is sent through
4 the United States mail, or is moved across a state or United States
5 boundary, in the commission or consummation of the offense; or

6 “(3) the advertisement which is the subject of the offense is sent
7 through the United States mail, or is moved across a state or
8 United States boundary, or is transmitted by an interstate or
9 foreign communication facility, in the commission or consumma-
10 tion of the offense.

11 **“§ 1534. Definitions for Section 1531 through 1533**

12 **“As used in sections 1531 through 1533:**

13 “(a) ‘communications common carrier’ has the meaning set
14 forth for the term ‘common carrier’ in section 3 of the Act of June
15 19, 1934, as amended (47 U.S.C. 153(h));

16 “(b) ‘contents’ includes information, obtained from a commu-
17 nication, which concerns the existence, substance, purport, or
18 meaning of the communication, or the identity of a party to the
19 communication;

20 “(c) ‘electronic, mechanical, or other device’ means a device or
21 apparatus which can be used to intercept a wire or oral communi-
22 cation, other than:

23 “(1) a telephone or telegraph instrument, equipment, or
24 facility, or any component thereof:

25 “(A) furnished to the subscriber or user by a commu-
26 nications common carrier in the usual course of its busi-
27 ness and being used by the subscriber or user in the usual
28 course of its business; or

29 “(B) being used by a communications common car-
30 rier in the usual course of its business or by an investiga-
31 tive or law enforcement officer in the course of his official
32 duties; or

33 “(2) a hearing aid or similar device being used to correct
34 subnormal hearing to not better than normal hearing;

35 “(d) ‘intercept’ means to acquire the contents of a wire or oral
36 communication;

37 “(e) ‘oral communication’ means speech uttered by a person
38 exhibiting an expectation that such speech is not subject
39 to overhearing, under circumstances reasonably justifying that
40 expectation;

1 “(f) ‘wire communication’ means a communication made in
 2 whole or in part through the use of a facility for the transmission
 3 of a communication by the aid of wire, cable, or other similar
 4 connection between the point of origin and the point of reception,
 5 furnished or operated by a person engaged as a communications
 6 common carrier in providing or operating such a facility for the
 7 transmission of interstate or foreign communications.

8 **“Chapter 16.—OFFENSES AGAINST THE PERSON**

“Sec.

“1601. Murder.

“1602. Manslaughter.

“1603. Negligent Homicide.

“1611. Maiming.

“1612. Aggravated Battery.

“1613. Battery.

“1614. Menacing.

“1615. Reckless Endangerment.

“1616. Terrorizing.

“1617. Criminal Harassment.

“1618. Threatening the President or a Successor to the Presidency.

“1621. Kidnapping.

“1622. Aggravated Restraint.

“1623. Restraint.

“1624. General Provisions for Sections 1621 through 1623.

“1625. Aircraft Hijacking.

“1626. Commandeering a Vessel.

“1631. Rape.

“1632. Sexual Imposition.

“1633. Sexual Abuse of a Minor.

“1634. Sexual Abuse of a Ward.

“1635. Unlawful Sexual Contact.

“1636. Definitions for Sections 1631 through 1635

9 **“§ 1601. Murder**

10 “(a) OFFENSE.—A person is guilty of an offense if:

11 “(1) except as provided in section 1602(a) (2), he knowingly
 12 causes the death of another person;

13 “(2) he recklessly causes the death of another person under
 14 circumstances manifesting extreme indifference to human life; or

15 “(3) acting either alone or with one or more other persons, he
 16 commits or attempts to commit an offense under section 1101
 17 (Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage),
 18 1121 (Espionage), 1314 (Escape), 1611 (Maiming), 1621
 19 (Kidnapping), 1622 (Aggravated Restraint), 1625 (Aircraft Hijacking),
 20 1631 (Rape), 1701 (Arson), 1711 (Burglary), or 1721
 21 (Robbery), and, in the course of and in furtherance of such under-
 22 lying offense or immediate flight therefrom, he or another person
 23 in fact causes the death of a person other than one of the par-
 24 ticipants in the offense.

25 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prose-

1 cution under subsection (a) (3), where the defendant was not the only
2 participant in the underlying offense, that the death was neither a
3 necessary nor a reasonably foreseeable consequence of the underlying
4 offense and that the defendant:

5 “(1) did not commit the homicidal act or in any way aid, abet,
6 counsel, command, induce, procure, facilitate, or solicit its com-
7 mission or attempted commission;

8 “(2) was not armed with a dangerous weapon;

9 “(3) reasonably believed that no other participant was armed
10 with a dangerous weapon; and

11 “(4) reasonably believed that no other participant intended to
12 engage or would engage in conduct likely to result in death or
13 serious bodily injury.

14 “(c) GRADING.—An offense described in this section is a Class A
15 felony.

16 “(d) JURISDICTION.—There is federal jurisdiction over an offense
17 described in this section if:

18 “(1) the offense is committed within the special jurisdiction of
19 the United States;

20 “(2) the offense is committed against:

21 “(A) a United States official;

22 “(B) a foreign dignitary or a member of his immediate
23 family while in the United States;

24 “(C) a federal public servant who is:

25 “(i) a judge;

26 “(ii) a juror;

27 “(iii) a law enforcement officer;

28 “(iv) an employee of a penal or correctional institu-
29 tion; or

30 “(v) a person designated for coverage under this sec-
31 tion in regulations promulgated by the Attorney General
32 while performing his official duties;

33 “(D) a foreign official who is in the United States on official
34 business, or a member of his immediate family whose presence
35 in the United States is in connection with the presence of
36 such foreign official; or

37 “(E) an official guest of the United States;

38 “(3) the offense is committed by transmitting through the
39 United States mail an explosive, destructive device, or other dan-
40 gerous weapon; or

“(4) the offense occurs during the commission of or during the immediate flight from the commission of an offense, over which federal jurisdiction exists, which is described in section 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage), 1112 (Impairing Military Effectiveness), 1121 (Espionage), 1302 (Obstructing a Government Function by Physical Interference), 1314 (Escape), 1323 (Tampering with a Witness or an Informant), 1324 (Retaliating against a Witness or an Informant), 1357 (Tampering with a Public Servant), 1358 (Retaliating against a Public Servant), 1501 (Interfering with Civil Rights), 1502 (Interfering with Civil Rights under Color of Law), 1511 (Interfering with an Election, Federal Activity, or Federal Employment), 1512 (Discriminating in Public Education, State Activities, Employment, Public Accommodations, Housing, or Travel), 1513 (Interfering with Speech or Assembly Related to Civil Rights Activities), 1621 (Kidnapping), 1622 (Aggravated Restraint), 1625 (Aircraft Hijacking), 1701 (Arson), 1702 (Aggravated Property Destruction), 1711 (Burglary), 1712 (Criminal Trespass), 1721 (Robbery), 1722 (Extortion), or 1724 (Loansharking).

“§ 1602. Manslaughter

“(a) OFFENSE.—A person is guilty of an offense if:

“(1) he recklessly causes the death of another person; or

“(2) he knowingly causes the death of another person under circumstances, for which he was not culpably responsible, which caused him to lose his self-control and would be likely to cause any ordinary person to lose his self-control to the same extent.

“(b) GRADING.—An offense described in this section is:

“(1) a Class B felony if the victim is known by the actor to be the President or a successor to the presidency;

“(2) a Class C felony in any other case.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section in a circumstance set forth in section 1601(d).

“§ 1603. Negligent Homicide

“(a) OFFENSE.—A person is guilty of an offense if he negligently causes the death of another person.

“(b) GRADING.—An offense described in this section is:

“(1) a Class D felony if the victim is known by the actor to be the President or a successor to the presidency;

1 “(2) a Class E felony in any other case.

2 “(c) JURISDICTION.—There is federal jurisdiction over an offense
3 described in this section in a circumstance set forth in section 1601(d).

4 **“§ 1611. Maiming**

5 “(a) OFFENSE.—A person is guilty of an offense if by physical force
6 he intentionally causes serious bodily injury, which is permanent or
7 likely to be permanent, to another person.

8 “(b) GRADING.—An offense described in this section is:

9 “(1) a Class B felony if the victim is known by the actor to
10 be the President or a successor to the presidency;

11 “(2) a Class C felony in any other case.

12 “(c) JURISDICTION.—There is federal jurisdiction over an offense
13 described in this section if:

14 “(1) the offense is committed within the special jurisdiction of
15 the United States;

16 “(2) the offense is committed against:

17 “(A) a United States official;

18 “(B) a foreign dignitary or a member of his immediate
19 family while in the United States;

20 “(C) a federal public servant who is:

21 “(i) a judge;

22 “(ii) a juror;

23 “(iii) a law enforcement officer;

24 “(iv) an employee of a penal or correctional insti-
25 tution; or

26 “(v) a person designated for coverage under this sec-
27 tion in regulations promulgated by the Attorney
28 eral

29 while performing his official duties;

30 “(D) a foreign official who is in the United States on
31 official business, or a member of his immediate family whose
32 presence in the United States is in connection with the pres-
33 ence of such foreign official; or

34 “(E) an official guest of the United States;

35 “(3) the offense is committed by transmitting through the
36 United States mail an explosive, destructive device, or other
37 dangerous weapon; or

38 “(4) the offense occurs during the commission of or during the
39 immediate flight from the commission of an offense, over which
40 federal jurisdiction exists, which is described in section 1101

(Treason), 1102 (Armed Rebellion or Insurrection), 1111 (Sabotage), 1112 (Impairing Military Effectiveness), 1121 (Espionage), 1302 (Obstructing a Government Function by Physical Interference), 1314 (Escape), 1323 (Tampering with a Witness or an Informant), 1324 (Retaliating against a Witness or an Informant), 1357 (Tampering with a Public Servant), 1358 (Retaliating against a Public Servant), 1501 (Interfering with Civil Rights), 1502 (Interfering with Civil Rights under Color of Law), 1511 (Interfering with an Election, Federal Activity, or Federal Employment), 1512 (Discriminating in Public Education, State Activities, Employment, Public Accommodations, Housing, or Travel), 1513 (Interfering with Speech or Assembly Related to Civil Rights Activities), 1621 (Kidnapping), 1622 (Aggravated Restraint), 1625 (Aircraft Hijacking), 1701 (Arson), 1702 (Aggravated Property Destruction), 1711 (Burglary), 1712 (Criminal Trespass), 1721 (Robbery), 1722 (Extortion), or 1724 (Loansharking).

“§ 1612. Aggravated Battery

“(a) OFFENSE.—A person is guilty of an offense if by physical force he causes serious bodily injury to another person.

“(b) GRADING.—An offense described in this section is:

“(1) a Class C felony if the victim is known by the actor to be the President or a successor to the presidency;

“(2) a Class D felony in any other case.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section in a circumstance set forth in section 1611(c).

“§ 1613. Battery

“(a) OFFENSE.—A person is guilty of an offense if by physical force he causes bodily injury to another person.

“(b) GRADING.—An offense described in this section is:

“(1) a Class E felony if the victim is known by the actor to be the President or a successor to the presidency;

“(2) a Class A misdemeanor in any other case unless committed in an unarmed fight or scuffle entered into mutually;

“(3) a Class C misdemeanor if committed in an unarmed fight or scuffle entered into mutually.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section in a circumstance set forth in section 1611(c) (1), (2), or (3).

1 **“§ 1614. Menacing**

2 “(a) OFFENSE.—A person is guilty of an offense if by physical
3 conduct he intentionally places another person in fear of imminent
4 bodily injury.

5 “(b) GRADING.—An offense described in this section is a Class A
6 misdemeanor.

7 “(c) JURISDICTION.—There is federal jurisdiction over an offense
8 described in this section in a circumstance set forth in section 1611(c)
9 (1), (2), or (3).

10 **“§ 1615. Reckless Endangerment**

11 “(a) OFFENSE.—A person is guilty of an offense if he recklessly
12 engages in conduct which places or may place another person in danger
13 of death or serious bodily injury.

14 “(b) GRADING.—An offense described in this section is:

15 “(1) a Class D felony if the circumstances manifest extreme
16 indifference to human life;

17 “(2) a Class E felony in any other case.

18 “(c) JURISDICTION.—There is federal jurisdiction over an offense
19 described in this section if:

20 “(1) the offense is committed within the special jurisdiction of
21 the United States; or

22 “(2) the offense occurs during the commission or during the
23 immediate flight from the commission of any other offense over
24 which federal jurisdiction exists.

25 **“§ 1616. Terrorizing**

26 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
27 keep any person in sustained fear for his or another person’s safety;
28 or with intent to cause evacuation of a building, place of assembly,
29 or a facility of transportation, or other serious disruption or incon-
30 venience to the public; or in reckless disregard of the risk of causing
31 such fear, evacuation, disruption, or inconvenience, he:

32 “(1) threatens another person with the commission or continued
33 commission of any crime of violence or any unlawful act danger-
34 ous to human life; or

35 “(2) falsely informs another person that the commission of
36 a crime of violence is imminent or in progress or that a circum-
37 stance dangerous to human life exists or is about to exist.

38 “(b) GRADING.—An offense described in this section is a Class D
39 felony.

1 “(c) JURISDICTION.—There is federal jurisdiction over an offense
2 described in this section:

3 “(1) in a circumstance set forth in section 1611(c);

4 “(2) if the United States mail is used in the commission or
5 consummation of the offense;

6 “(3) if the threat or information is transmitted in interstate
7 or foreign commerce;

8 “(4) if the threat or information concerns property which is
9 owned by, or is under the care, custody, or control of, a trans-
10 portation, communication, or power facility operating in inter-
11 state or foreign commerce; or

12 “(5) if the threat concerns property which is owned by, or is
13 under the care, custody, or control of, the United States.

14 **“§ 1617. Criminal Harassment**

15 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
16 frighten or harass another person, he:

17 “(1) communicates a threat to commit a crime of violence;

18 “(2) makes a telephone call anonymously;

19 “(3) make a telephone call in obscene language; or

20 “(4) makes repeated telephone calls, whether or not a conver-
21 sation ensues, with no purpose of legitimate communication.

22 “(b) GRADING.—An offense described in this section is:

23 “(1) a Class A misdemeanor in the circumstances set forth in
24 subsection (a) (1);

25 “(2) a Class B misdemeanor in any other case.

26 “(c) JURISDICTION.—There is federal jurisdiction over an offense
27 described in this section if:

28 “(1) the offense is committed within the special jurisdiction of
29 the United States;

30 “(2) the United States mail is used in the commission or con-
31 summation of the crime; or

32 “(3) the threat or telephone call is transmitted in interstate
33 commerce.

34 **“§ 1618. Threatening the President or a Successor to the
35 Presidency**

36 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
37 makes a threat to commit a crime of violence upon the person of the
38 President or a successor to the presidency, or knowingly makes a false
39 report that such harm is threatened or imminent:

1 “(1) by a communication addressed to or otherwise likely to
2 come to the attention of such official or his staff; or

3 “(2) under circumstances in which the threat may reasonably
4 be taken as an expression of serious purpose.

5 “(b) GRADING.—An offense described in this section is a Class D
6 felony.

7 **“§ 1621. Kidnapping**

8 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
9 restrains another person with intent to:

10 “(1) hold him for ransom or reward;

11 “(2) use him as a shield or hostage;

12 “(3) commit, or take flight after committing, a felony; or

13 “(4) interfere with the performance of any government func-
14 tion.

15 “(b) GRADING.—An offense described in this section is:

16 “(1) a Class A felony if the actor does not voluntarily release
17 the victim alive and in a safe place prior to trial;

18 “(2) a Class B felony if the actor voluntarily releases the victim
19 alive and in a safe place prior to trial but the victim has suffered
20 serious bodily injury;

21 “(3) a Class C felony in any other case.

22 “(c) JURISDICTION.—There is federal jurisdiction over an offense
23 described in this section if:

24 “(1) the offense is committed within the special jurisdiction
25 of the United States;

26 “(2) the offense is committed against:

27 “(A) a United States official;

28 “(B) a foreign dignitary or a member of his immediate
29 family while in the United States;

30 “(C) a federal public servant who is:

31 “(i) a judge;

32 “(ii) a juror;

33 “(iii) a law enforcement officer;

34 “(iv) an employee of a penal or correctional institu-
35 tion; or

36 “(v) a person designated for coverage under this sec-
37 tion in regulations promulgated by the Attorney Gen-
38 eral

39 while performing his official duties or on account of the
40 performance of his official duties or because of his status as

1 a public servant, or a member of the immediate family of
2 such a federal public servant on account of the latter's per-
3 formance of his official duties or because of his status as a
4 federal public servant;

5 "(D) a foreign official who is in the United States on offi-
6 cial business or a member of his immediate family whose
7 presence in the United States is in connection with the pres-
8 ence of such foreign official; or

9 "(E) an official guest of the United States;

10 "(3) movement of the victim across a state or United States
11 boundary occurs in the commission or consummation of the of-
12 fense; or

13 "(4) the offense occurs during the commission of or during
14 the immediate flight from the commission of an offense, over
15 which federal jurisdiction exists, which is described in section
16 1101 (Treason), 1102 (Armed Rebellion or Insurrection), 1111
17 (Sabotage), 1121 (Espionage), 1203 (Entering or Recruiting for
18 a Foreign Armed Force), 1223 (Hindering Discovery of an
19 Alien Unlawfully in the United States), 1302 (Obstructing a
20 Government Function by Physical Interference), 1314 (Escape),
21 1323 (Tampering with a Witness or an Informant), 1324 (Re-
22 taliating against a Witness or an Informant), 1357 (Tampering
23 with a Public Servant), 1358 (Retaliating against a Public Serv-
24 ant), 1501 (Interfering with Civil Rights), 1502 (Interfering
25 with Civil Rights under Color of Law), 1511 (Interfering with
26 an Election, Federal Activity, or Federal Employment), 1512
27 (Discriminating in Public Education, State Activities, Employ-
28 ment, Public Accommodation, Housing, or Travel), 1513 (Inter-
29 fering with Speech or Assembly related to Civil Rights Activi-
30 ties), 1701 (Arson), 1702 (Aggravated Property Destruction),
31 1711 (Burglary), 1712 (Criminal Trepass), 1721 (Robbery),
32 1722 (Extortion), or 1724 (Loansharking).

33 **"§ 1622. Aggravated Restraint**

34 "(a) OFFENSE.—A person is guilty of an offense if he knowingly re-
35 strains another person:

36 "(1) under circumstances which in fact expose the other per-
37 son to a risk of serious bodily injury;

38 "(2) by secreting and holding him in a place where he is not
39 likely to be found;

f,

1 “(3) by endangering or threatening to endanger the safety of
2 any person; or

3 “(4) by holding him in a condition of involuntary servitude,
4 slavery, or peonage.

5 “(b) GRADING.—An offense described in this section is:

6 “(1) a Class C felony if the victim suffers serious bodily injury;

7 “(2) a Class D felony in any other case.

8 “(c) JURISDICTION.—There is federal jurisdiction over an offense
9 described in:

10 “(1) subsections (a) (1) through (a) (3), in a circumstance set
11 forth in section 1621(c).

12 “(2) subsection (a) (4), if the offense is committed within the
13 United States or within the special jurisdiction of the United
14 States.

15 **“§ 1623. Restraint**

16 “(a) OFFENSE.—A person is guilty of an offense if he knowingly re-
17 strains another person.

18 “(b) GRADING.—An offense described in this section is a Class A
19 misdemeanor.

20 “(c) JURISDICTION.—There is federal jurisdiction over an offense de-
21 scribed in this section in a circumstance set forth in section 1621(c) (1),
22 (2), or (3).

23 **“§ 1624. General Provisions for Sections 1621 through 1623**

24 “(a) DEFINITION.—As used in section 1621 through 1623, ‘restrains’
25 means to restrict the movement of a person unlawfully and without
26 consent, so as to interfere with his liberty, by confining him or by mov-
27 ing him from one place to another unless such confinement or move-
28 ment is trivial or wholly incidental to the commission of another of-
29 fense, or by removing him from his place of residence or business; re-
30 straint is ‘without consent’ if it is accomplished by:

31 “(1) force, threat, intimidation, or deception; or

32 “(2) any means, including acquiescence of the victim, if in fact
33 he is less than fourteen years old or an incompetent person, and if
34 the parent, guardian, or person or institution responsible for the
35 general supervision of his welfare has not acquiesced in the move-
36 ment or confinement.

37 “(b) PRESUMPTION.—The failure to release a victim of an offense
38 described in sections 1621 through 1623, within twenty-four hours after
39 he has been unlawfully restrained creates a rebuttable presumption
40 that he has been moved across a state or United States boundary. This

1 presumption does not in any way limit federal investigatory authority.

2 “(c) DEFENSE.—It is a defense to a prosecution under sections 1621
3 through 1623 that the actor is a parent or guardian of the person re-
4 strained and that the person restrained is less than eighteen years old.

5 **“§ 1625. Aircraft Hijacking**

6 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
7 seizes or exercises control over an aircraft by force, threat, intima-
8 tion, or deception.

9 “(b) GRADING.—An offense described in this section is:

10 “(1) a Class A felony if a crew member or a passenger has suf-
11 fered serious bodily injury in the commission or consummation
12 of the offense;

13 “(2) a Class B felony in any other case.

14 “(c) JURISDICTION.—There is federal jurisdiction over an offense
15 described in this section if:

16 “(1) the offense is committed within the special aircraft juris-
17 diction of the United States; or

18 “(2) the offense is committed, by means other than deception,
19 outside the special aircraft jurisdiction of the United States; and

20 “(A) the offense is committed aboard an aircraft ‘in flight’,
21 as set forth in section 203;

22 “(B) the place of take-off or the place of landing of the
23 aircraft is situated outside the territory of the nation in which
24 the aircraft is registered; and

25 “(C) the person is afterwards found in the United States.

26 **“§ 1626. Commandeering a Vessel**

27 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
28 seizes or exercises control over a vessel by force, threat, intimidation,
29 or deception.

30 “(b) GRADING.—An offense described in this section is:

31 “(1) a Class D felony if the defendant is a member of the crew
32 of the vessel or the offense is committed on the high seas;

33 “(2) a Class E felony in any other case.

34 “(c) JURISDICTION.—There is federal jurisdiction over an offense
35 described in this section if the offense is committed within the special
36 maritime jurisdiction of the United States.

37 **“§ 1631. Rape**

38 “(a) OFFENSE.—A person is guilty of an offense if he engages in a
39 sexual act with another person, not his spouse, and:

40 “(1) compels the other person to participate:

1 “(A) by force; or

2 “(B) by threatening or placing the other person in fear
3 that any person will imminently be subjected to death, serious
4 bodily injury, or kidnapping;

5 “(2) has substantially impaired the other person’s power to
6 appraise or control the conduct by administering or employing
7 a drug or intoxicant without the knowledge or against the will of
8 such other person, or by other means; or

9 “(3) the other person is, in fact, less than twelve years old.

10 “(b) GRADING.—An offense described in this section is a Class C
11 felony.

12 “(c) JURISDICTION.—There is federal jurisdiction over an offense
13 described in this section if:

14 “(1) the offense is committed within the special jurisdiction of
15 the United States; or

16 “(2) the offense occurs during the commission of or during
17 the immediate flight from the commission of an offense, over which
18 federal jurisdiction exists, which is described in section 1323
19 (Tampering with a Witness or an Informant), 1324 (Retaliating
20 Against a Witness or an Informant), 1357 (Tampering with a
21 Public Servant), 1358 (Retaliating against a Public Servant),
22 1501 (Interfering with Civil Rights), 1502 (Interfering with
23 Civil Rights under Color of Law), 1601 (Murder), 1602 (Man-
24 slaughter), 1611 (Maiming), 1612 (Aggravated Battery), 1613
25 (Battery), 1621 (Kidnapping), 1622 (Aggravated Restraint),
26 1623 (Restraint), 1625 (Aircraft Hijacking), 1634 (Sexual Abuse
27 of a Ward), 1711 (Burglary), 1712 (Criminal Trespass), 1721
28 Robbery), or 1841 (Conducting a Prostitution Business).

29 “§ 1632. Sexual Imposition

30 “(a) OFFENSE.—A person is guilty of an offense if he engages in a
31 sexual act with another person, not his spouse, and:

32 “(1) knows that the other person is mentally incapable of un-
33 derstanding the nature of the conduct;

34 “(2) knows that the other person is unaware that a sexual act
35 is being committed;

36 “(3) knows that the other person participates because of a mis-
37 taken belief that the actor is married to such other person; or

38 “(4) compels the other person to participate by any threat or
39 by placing the other person in fear.

1 “(b) GRADING.—An offense described in this section is a Class D
2 felony.

3 “(c) JURISDICTION.—There is federal jurisdiction over an offense
4 described in this section if:

5 “(1) the offense is committed within the special jurisdiction of
6 the United States;

7 “(2) the offense is committed in the circumstances set forth
8 in subsection (a) (1) or (2) and occurs during the commission
9 of or during the immediate flight from the commission of an of-
10 fense over which federal jurisdiction exists, which is described in
11 section 1621 (Kidnapping), 1622 (Aggravated Restraint), 1623
12 (Restraint), 1634 (Sexual Abuse of a Ward), 1711 (Burglary),
13 1712 (Criminal Trespass), and 1841 (Conducting a Prostitution
14 Business); or

15 “(3) the offense is committed in the circumstances set forth in
16 subsection (a) (4) and in a circumstance set forth in section 1631
17 (c) (2).

18 **“§ 1633. Sexual Abuse of a Minor**

19 “(a) OFFENSE.—A person is guilty of an offense if he engages in a
20 sexual act with another person who is not his spouse, who is less than
21 sixteen years old, and who is at least five years younger than the
22 actor.

23 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prose-
24 cution under this section that the actor reasonably believed the other
25 person to be sixteen years old or older.

26 “(c) GRADING.—An offense described in this section is:

27 “(1) a Class E felony if the actor is twenty-one years old or
28 older.

29 “(2) a Class A misdemeanor in any other case.

30 “(d) JURISDICTION.—There is federal jurisdiction over an offense
31 described in this section if:

32 “(1) the offense is committed within the special jurisdiction
33 of the United States; or

34 “(2) the offense occurs during the commission of or during the
35 immediate flight from the commission of an offense over which
36 federal jurisdiction exists, which is described in sections 1621
37 (Kidnapping), 1622 (Aggravated Restraint), 1623 (Restraint),
38 1634 (Sexual Abuse of a Ward), 1711 (Burglary), 1712 (Crim-
39 inal Trespass), or 1841 (Conducting a Prostitution Business).

1 **“§ 1634. Sexual Abuse of a Ward**

2 “(a) OFFENSE.—A person is guilty of an offense if he engages in a
3 sexual act with another person who is not his spouse, who is in official
4 detention, and who is under the custodial, supervisory, or disciplinary
5 authority of the actor.

6 “(b) GRADING.—An offense described in this section is a Class A
7 misdemeanor.

8 “(c) JURISDICTION.—There is federal jurisdiction over an offense
9 described in this section if:

10 “(1) the offense is committed within the special jurisdiction of
11 the United States;

12 “(2) the official detention is under the laws of the United
13 States;

14 “(3) the official detention is in a federal facility; or

15 “(4) the actor is a federal public servant.

16 **“§ 1635. Unlawful Sexual Contact**

17 “(a) OFFENSE.—A person is guilty of an offense if he has sexual
18 contact with another person, not his spouse, or causes such other per-
19 son to have sexual contact with him, under circumstances that would
20 constitute an offense under section 1631, 1632, 1633, or 1634 if the
21 conduct involved a sexual act.

22 “(b) GRADING.—An offense described in this section is of a class
23 two grades below that of the corresponding offense defined in sections
24 1631 through 1634.

25 “(c) JURISDICTION.—There is federal jurisdiction over an offense de-
26 scribed in this section if there would be federal jurisdiction over the
27 corresponding offense set forth in sections 1631 through 1634.

28 **“§ 1636. Definitions for Sections 1631 through 1635**

29 “As used in sections 1631 through 1635:

30 “(a) ‘sexual act’ means conduct between human beings consist-
31 ing of contact between the penis and the vulva, the penis and the
32 anus, the mouth and the penis, or the mouth and the vulva; for
33 purposes of this subsection, contact involving the penis occurs
34 upon penetration, however slight;

35 “(b) ‘sexual contact’ means a touching of the sexual or other
36 intimate parts of a person to arouse or gratify the sexual desire
37 of any person;

38 “(c) ‘spouse’ means a person with whom the actor is living as
39 husband and wife, regardless of the legal status of their relation-

1 ship, and does not include a husband or wife living apart under a
2 decree of judicial separation.

3 **“Chapter 17.—OFFENSES AGAINST PROPERTY**

“Sec.

“1701. Arson.

“1702. Aggravated Property Destruction.

“1703. Property Destruction.

“1704. General Provisions for Sections 1701 through 1703.

“1711. Burglary.

“1712. Criminal Trespass.

“1713. Stowing Away.

“1714. Definitions for Sections 1711 through 1713.

“1721. Robbery.

“1722. Extortion.

“1723. Criminal Coercion.

“1724. Loansharking.

“1731. Theft.

“1732. Receiving Stolen Property.

“1733. Proof Under Sections 1731 and 1732.

“1734. Executing a Scheme to Defraud.

“1735. Interfering with a Security Interest.

“1741. Counterfeiting or Forgery.

“1742. Unauthorized Use of a Writing.

“1743. Trafficking in a Counterfeiting Implement.

“1744. Definitions for Sections 1741 through 1743.

“1751. Commercial Bribery.

“1752. Labor Bribery.

“1753. Sports Bribery.

“1761. Securities Violations.

“1762. Failing to Report Currency or Foreign Transactions.

“1763. Commodity Exchange Violations.

“1764. Bankruptcy Fraud.

“1765. Fraud in a Regulated Industry.

“1766. Adulterated Food Products Violations.

“1771. Food Stamp Coupon Offenses.

4 **“§ 1701. Arson**

5 “(a). OFFENSE.—A person is guilty of an offense if, by fire or
6 explosion, he knowingly damages a vital public facility or damages
7 substantially a building or public structure.

8 “(b) GRADING.—An offense described in this section is a Class C
9 felony.

10 “(c) JURISDICTION.—There is federal jurisdiction over an offense
11 described in this section if:

12 “(1) the offense is committed within the special jurisdiction of
13 the United States;

14 “(2) the property which is the subject of the offense is owned
15 by, or is under the care, custody, or control of, the United States,
16 or is being produced, manufactured, constructed, or stored for
17 the United States;

18 “(3) the property which is the subject of the offense is located
19 within the United States and is owned by, or is under the care,
20 custody, or control of:

1 “(A) a foreign government or international organization;

2 “(B) a foreign dignitary or a member of his immediate
3 family while in the United States;

4 “(C) a foreign official who is in the United States on offi-
5 cial business, or a member of his immediate family whose
6 presence in the United States is in connection with the pres-
7 ence of such foreign official; or

8 “(D) an official guest of the United States;

9 “(4) the property which is the subject of the offense is moving
10 in interstate or foreign commerce or constitutes or is a part of
11 an interstate or foreign shipment;

12 “(5) the property which is the subject of the offense is used
13 in an activity affecting interstate or foreign commerce and is
14 damaged by means of a destructive device;

15 “(6) the property which is the subject of the offense is owned
16 by, or is under the care, custody, or control of an organization
17 receiving financial assistance from the United States and is dam-
18 aged by means of a destructive device;

19 “(7) the offense is against a communication, transportation,
20 or power facility of interstate commerce or against any property,
21 structure, or apparatus used in support of such facility;

22 “(8) the United States mail or a facility of interstate or foreign
23 commerce is used in the planning, promotion, management, execu-
24 tion, consummation, or concealment of the offense, or in the distri-
25 bution of the proceeds of the offense;

26 “(9) movement of a person across a state or United States
27 boundary occurs in the course of the planning, promotion, manage-
28 ment, execution, consummation, or concealment of the offense, or
29 in the course of the distribution of the proceeds of the offense; or

30 “(10) the offense occurs during the commission of or during
31 the immediate flight from the commission of an offense over which
32 federal jurisdiction exists, which is described in section 1302
33 (Obstructing a Government Function by Physical Interference),
34 1314 (Escape), 1323 (Tampering with a Witness or an Inform-
35 ant), 1324 (Retaliating against a Witness or an Informant),
36 1357 (Tampering with a Public Servant), 1358 (Retaliating
37 against a Public Servant), 1501 (Interfering with Civil Rights),
38 1502 (Interfering with Civil Rights under Color or Law), 1511
39 (Interfering with an Election, Federal Activity, or Federal Em-
40 ployment), 1512 (Discriminating in Public Education, State

Activities, Employment, Public Accommodations, Housing, or Travel); or 1513 (Interfering with Speech or Assembly Related to Civil Rights Activities).

“§ 1702. Aggravated Property Destruction

“(a) OFFENSE.—A person is guilty of an offense if he knowingly:

“(1) damages property of another and thereby causes a significant interruption or impairment of a function of a vital public facility;

“(2) damages a vital public facility; or

“(3) damages, in an amount which in fact exceeds \$500, property of another.

“(b) GRADING.—An offense described in this section is:

“(1) a Class D felony if:

“(A) the offense is under subsection (a) (1) or (2); or

“(B) the offense is under subsection (a) (3) and the damage exceeds \$100,000;

“(2) a Class E felony in any other case.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section:

“(1) in a circumstance set forth in section 1701(c); or

“(2) if the property which is the subject of the offense is mail.

“§ 1703. Property Destruction

“(a) OFFENSE.—A person is guilty of an offense if he damages property of another.

“(b) GRADING.—An offense described in this section is:

“(1) a Class E felony if the property is mail other than a newspaper, magazine, advertising matter, or circular;

“(2) a Class A misdemeanor in any other case if the damage exceeds \$500;

“(3) a Class B misdemeanor in any other case.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section:

“(1) in a circumstance set forth in section 1701(c) (1) through (9); or

“(2) if the property which is the subject of the offense is mail.

“§ 1704. General Provisions for Sections 1701 through 1703

“(a) DEFINITIONS.—As used in sections 1701 through 1703:

“(1) ‘building’ means a structure, or a separate part thereof, designed for use, or used, in whole or in part as:

“(A) a dwelling; or

1 “(B) a place to carry on a business or calling or to store
2 property;

3 “(2) ‘public structure’ means a structure where persons assem-
4 ble for purposes of business, government, education, religion, or
5 entertainment;

6 “(3) ‘vital public facility’ includes a facility of public or govern-
7 ment communication, transportation, power, water, or sanitation
8 services; a facility of a police, fire, or public health agency; or a
9 facility designed for use, or used, as a means of national defense;
10 or any part of the foregoing or any property, structure, or appa-
11 ratus used in support of the foregoing.

12 “(b) DEFENSE.—It is a defense to a prosecution under sections 1701
13 through 1703 that the actor’s conduct was consented to by the owner
14 or owners of all property damaged and was in compliance with all
15 laws regulating such conduct.

16 **“§ 1711. Burglary**

17 “(a) OFFENSE.—A person is guilty of an offense if, without author-
18 ity and with intent to commit a crime therein, he knowingly enters, or
19 remains surreptitiously within, a building or vehicle.

20 “(b) GRADING.—An offense described in this section is:

21 “(1) a Class C felony if it involves a dwelling and the offense is
22 committed at night;

23 “(2) a Class D felony in any other case.

24 “(c) JURISDICTION.—There is federal jurisdiction over an offense
25 described in this section if:

26 “(1) the offense is committed within the special jurisdiction of
27 the United States;

28 “(2) the subject of the offense is a building or vehicle owned by,
29 or under the care, custody, or control of, the United States;

30 “(3) the subject of the offense is a United States post office, or is
31 a building in a part of which a United States post office is located,
32 and the crime intended would have affected the post office itself
33 or anything therein;

34 “(4) the subject of the offense is a national credit institution, or
35 is a building in a part of which a national credit institution is
36 located, and the crime intended would have affected the credit in-
37 stitution itself or anything therein; or

38 “(5) the subject of the offense is a vehicle containing property
39 which is moving in interstate or foreign commerce or which con-
40 stitutes or is a part of an interstate or foreign shipment.

§ 1712. Criminal Trespass

“(a) OFFENSE.—A person is guilty of an offense if, without authority, he knowingly enters, or remains within or on, any premises.

“(b) GRADING.—An offense described in this section is:

“(1) a Class A misdemeanor if the premises are highly secured government premises, or consist of a dwelling;

“(2) a Class B misdemeanor if the premises are so enclosed or secured as manifestly to exclude intruders, or consist of a building other than a dwelling;

“(3) a Class C misdemeanor if the premises consist of a place as to which notice prohibiting trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders;

“(4) an infraction in any other case.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section:

“(1) in a circumstance set forth in section 1711(c) (1), (2), or (5); or

“(2) if the premises consist of national forest land which has been closed to the public pursuant to regulations promulgated by the Secretary of Agriculture.

§ 1713. Stowing Away

“(a) OFFENSE.—A person is guilty of an offense if, without authority and with intent to obtain transportation, he knowingly secretes himself aboard a vessel or aircraft and is aboard when it leaves the point of embarkation.

“(b) GRADING.—An offense described in this section is a Class A misdemeanor.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if:

“(1) the offense if committed within the special jurisdiction of the United States; or

“(2) movement of the actor across a state or United States boundary occurs in the commission or consummation of the offense.

§ 1714. Definitions for Sections 1711 through 1713

“As used in sections 1711 through 1713:

“(a) ‘building’ has the meaning set forth in section 1704 (a) (1);

“(b) ‘highly secured’ premises means continuously guarded premises where display of visible identification is required of persons while they are on the premises;

1 “(c) ‘night’ means the period between 30 minutes past sunset and
2 30 minutes before sunrise;

3 “(d) ‘premises’ includes a building, structure, vehicle, or real
4 property;

5 “(e) ‘without authority’ means without right of ownership, and
6 without license, invitation, or other privilege.

7 **“§ 1721. Robbery**

8 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
9 takes property of another from the person or presence of another by
10 force and violence, or by threatening or placing another person in
11 fear that any person will imminently be subjected to bodily injury.

12 “(b) GRADING.—An offense under this section is a Class C felony.

13 “(c) JURISDICTION.—There is federal jurisdiction over an offense
14 described in this section if:

15 “(1) the offense is committed within the special jurisdiction
16 of the United States;

17 “(2) the property which is the subject of the offense is owned
18 by, or is under the care, custody, or control of, the United States,
19 or is being produced, manufactured, constructed, or stored for
20 the United States;

21 “(3) the property which is the subject of the offense is owned
22 by, or is in the care, custody, or control of, a national credit
23 institution;

24 “(4) the property which is the subject of the offense is mail;

25 “(5) the offense in any way or degree, affects, delays, or ob-
26 structs interstate or foreign commerce or the movement of any
27 article or commodity in interstate or foreign commerce;

28 “(6) the property which is the subject of the offense is moving
29 in interstate or foreign commerce or constitutes or is a part of
30 an interstate or foreign shipment, or is in a pipeline system which
31 extends interstate or a storage facility thereof; or

32 “(7) movement of a person across a state or United States
33 boundary occurs in the course of the planning, promotion, man-
34 agement, execution, consummation, or concealment of the offense,
35 or in the course of the distribution of the proceeds of the
36 offense.

37 **“§ 1722. Extortion**

38 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
39 obtains property of another by force, or by threatening or placing
40 another person in fear that any person will be subjected to bodily
41 injury or kidnapping or that any property will be damaged.

1 “(b) GRADING.—An offense described in this section is a Class C
2 felony.

3 “(c) JURISDICTION.—There is federal jurisdiction over an offense
4 described in this section:

5 “(1) in a circumstance set forth in section 1721(c);

6 “(2) if the United States mail or a facility of interstate or
7 foreign commerce is used in the planning, promoting, manage-
8 ment, execution, consummation, or concealment of the offense,
9 or in the distribution of the proceeds of the offense;

10 “(3) if the offense is committed by a federal public servant
11 acting under color of office;

12 “(4) if the offense is committed by a person pretending to be
13 a federal public servant, a former federal public servant, or a
14 foreign official;

15 “(5) if the property which is the subject of the offense consists
16 of any part of the compensation of a person employed in the
17 construction, completion, repair, or refurbishing of a federal pub-
18 lic building, federal public work, or building financed in whole
19 or in part by a loan or grant from the United States, and is
20 obtained by threatening or placing any person in fear in rela-
21 tion to that person’s employment; or

22 “(6) if the property which is the subject of the offense is
23 obtained by threatening or placing a person in fear in relation
24 to any person’s employment under a grant or contract of assist-
25 ance pursuant to the Economic Opportunity Act of 1964, as
26 amended (42 U.S.C. 2701 et seq.).

27 **“§ 1723. Criminal Coercion**

28 “(a) OFFENSE.—A person is guilty of an offense if he knowingly ob-
29 tains property of another by threatening or placing another person in
30 fear that any person will:

31 “(1) commit any crime;

32 “(2) accuse any person of a crime;

33 “(3) procure the dismissal of any person from employment,
34 or refuse to employ or renew a contract of employment of any
35 person;

36 “(4) wrongfully subject any person to economic loss or injury
37 to his business or profession;

38 “(5) expose a secret or publicize an asserted fact, whether true
39 or false, tending to subject any person, living or dead, to hatred,
40 contempt, or ridicule, or unjustifiably to impair his personal, pro-
41 fessional, or business reputation, or his credit; or

1 “(6) unjustifiably take or withhold official action as a public
2 servant, or unjustifiably cause a public servant to take or withhold
3 official action.

4 “(b) GRADING.—An offense described in this section is:

5 “(1) a Class D felony if:

6 “(A) the property which is the subject of the offense has a
7 value in excess of \$500;

8 “(B) regardless of its monetary value, the property which
9 is the subject of the offense consists of:

10 “(i) a firearm, ammunition, or a destructive device;

11 “(ii) a motor vehicle, vessel, or aircraft;

12 “(iii) a file, record, or other document, owned by, or
13 under the care, custody, or control of, the United States;

14 “(iv) an engraving, plate, hub, stone, paper, tool, die,
15 mold, ink, photograph, negative, or other implement or
16 impression used in the preparation of any money, stamp,
17 obligation, security, document, or other writing of the
18 United States;

19 “(v) a key or other implement designed to provide
20 access to mail or to property owned by, or under the care,
21 custody, or control of, the United States; or

22 “(vi) mail other than a newspaper, magazine, circular,
23 or advertising matter;

24 “(2) a Class A misdemeanor if the property which is the sub-
25 ject of the offense has a value in excess of \$100 but not more than
26 \$500;

27 “(3) a Class B misdemeanor in any other case.

28 “(c) JURISDICTION.—There is federal jurisdiction over an offense
29 described in this section:

30 “(1) in a circumstance set forth in section 1722(c);

31 “(2) if the fear in subsection (a)(1) or (2) involves a federal
32 crime; or

33 “(3) if the fear in subsection (a)(6) involves federal official
34 action.

35 **“§ 1724. Loansharking**

36 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

37 “(1) makes or finances an extortionate extension of credit;

38 “(2) collects an extension of credit by extortionate means, or
39 punishes any person by such means for nonrepayment of an ex-
40 tension of credit; or

1 “(3) makes or finances an extension of credit :

2 “(A) which, including unpaid interest or similar charges
3 and any other outstanding extensions of credit to the same
4 debtor, in fact has an aggregate value in excess of \$100;

5 “(B) which carries a rate of interest exceeding an annual
6 rate of 45 percent, calculated according to the actuarial
7 method of allocating payments between principal and inter-
8 est under which a payment is applied first to the accumu-
9 lated interest and the balance is applied to the unpaid prin-
10 cipal: and

11 “(C) the repayment of which, or the performance of any
12 promise given in return for which, would not in fact be
13 enforceable though civil judicial process against the debtor
14 in the jurisdiction within which the debtor, if a human being,
15 resided at the time the extension of credit was made, or, in
16 every jurisdiction within which the debtor, if other than a
17 human being, was incorporated or qualified to do business at
18 the time the extension of credit was made.

19 “(b) DEFINITIONS.—As used in this section :

20 “(1) ‘creditor’ means a person who makes an extension of
21 credit, or who claims by, under, or through a person making an
22 extension of credit;

23 “(2) ‘debtor’ means a person to whom an extension of credit
24 is made, or a person who guarantees the repayment of an exten-
25 sion of credit or who undertakes to indemnify the creditor against
26 loss from a failure to repay the extension of credit;

27 “(3) ‘extension of credit’ means a loan, a renewal of a loan, or a
28 tacit or express agreement concerning the deferment of the re-
29 payment or satisfaction of a debt or claim, whether acknowledged
30 or disputed, valid or invalid, and however arising;

31 “(4) ‘extortionate extension of credit’ means an extension of
32 credit with respect to which it is the understanding of the creditor
33 and the debtor, at the time it is made, that delay in making re-
34 payment or failure to make repayment could result in the use of
35 extortionate means;

36 “(5) ‘extortionate means’ is any means which involves the use of
37 force or threatening or placing another in fear that any person will
38 be subjected to bodily injury, kidnapping, or injury to reputation,
39 or that any property will be damaged.

1 “(c) **PROOF.**—If evidence is introduced tending to show the ex-
2 istence of the circumstances described in subsection (a) (3) (A) or (B).
3 and the direct evidence of the actual belief of the debtor as to the
4 creditor’s collection practices is not available:

5 “(1) in a prosecution under subsection (a) (1), for the purpose
6 of showing the understanding of the debtor and the creditor at
7 the time the extension of credit was made, the court may allow
8 the introduction of evidence concerning the reputation as to
9 collection practices of the creditor in any community of which
10 the debtor was a member at the time of the extension of credit;

11 “(2) in a prosecution under subsection (a) (2), for the purpose
12 of showing that words or other means of communication, shown
13 to have been employed as a means of collection, in fact carried
14 a threat, the court may allow the introduction of evidence concern-
15 ing the reputation of the defendant in any community of which
16 the person against whom the alleged threat was made was a mem-
17 ber at the time of collection or attempted collection.

18 “(d) **GRADING.**—An offense described in this section is:

19 “(1) a Class C felony in the circumstances set forth in subsec-
20 tions (a) (1) and (2);

21 “(2) a Class D felony in the circumstances set forth in subsection
22 (a) (3).

23 “(e) **JURISDICTION.**—There is federal jurisdiction over an offense
24 described in this section pursuant to the findings expressed by Con-
25 gress in section 201 of the Consumer Protection Act (Public Law
26 90-321).

27 **“§ 1731. Theft**

28 “(a) **OFFENSE.**—A person is guilty of an offense if he knowingly:

29 “(1) takes or exercises unauthorized control over;

30 “(2) makes an unauthorized use, disposition, or transfer of; or

31 “(3) obtains by fraud

32 property of another with intent to deprive the other of the rights
33 thereto and benefits thereof or to appropriate the property to his own
34 use or to the use of another person.

35 “(b) **CONSTRUCTION.**—Conduct designated as an offense in subsec-
36 tion (a) includes the various offenses heretofore known as theft, steal-
37 ing, larceny, purloining, abstracting, embezzlement, misapplication,
38 misappropriation, conversion, obtaining money or property by false
39 pretenses, fraud, deception, and all other offenses similar in nature. An
40 indictment or information charging an offense under this section is not

1 insufficient because it fails to specify a particular form of such con-
2 duct.

3 “(c) GRADING.—An offense described in this section is:

4 “(1) a Class D felony if:

5 “(A) the property which is the subject of the offense has
6 a value in excess of \$500;

7 “(B) regardless of its monetary value, the property which
8 is the subject of the offense consists of:

9 “(i) a firearm, ammunition, or a destructive device;

10 “(ii) a motor vehicle, vessel, or aircraft;

11 “(iii) a file, record, or other document, owned by, or
12 under the care, custody, or control of, the United States;

13 “(iv) an engraving, plate, hub, stone, paper, tool, die,
14 mold, ink, photograph, negative, or other implement or
15 impression used in the preparation of any money, stamp,
16 obligation, security, document, or other writing of the
17 United States;

18 “(v) a key or other implement designed to provide
19 access to mail or to property owned by, or under the care,
20 custody, or control of, the United States; or

21 “(vi) mail other than a newspaper, magazine, circular,
22 or advertising matter;

23 “(2) a Class A misdemeanor if the property which is the sub-
24 ject of the offense has a value in excess of \$100 but not more than
25 \$500;

26 “(3) a Class B misdemeanor in any other case.

27 “(d) JURISDICTION.—There is federal jurisdiction over an offense
28 described in this section if:

29 “(1) the subject of the offense is any property and:

30 “(A) the offense is committed within the special juris-
31 diction of the United States;

32 “(B) the property is owned by, or is under the care, cus-
33 tody, or control of, the United States, or is being produced,
34 manufactured, constructed, or stored for the United States;

35 “(C) the offense is committed by a federal public servant
36 acting under color of office;

37 “(D) the offense is committed by a person pretending to
38 be a federal public servant, a former federal public servant,
39 or a foreign official;

1 “(E) the property is obtained upon a representation that
2 it will be used to cause a federal public servant to take or
3 withhold official action; or

4 “(F) the property has a value of \$5,000 or more and is
5 obtained through the use of a counterfeit, fictitious, altered,
6 forged, lost, or stolen credit card in a transaction affecting
7 interstate or foreign commerce; or

8 “(2) the subject of the offense is property other than services
9 and:

10 “(A) the property is mail;

11 “(B) the property is moving in interstate or foreign com-
12 merce, or constitutes or is a part of an interstate or foreign
13 shipment, or is in a pipeline system which extends interstate
14 or a storage facility thereof;

15 “(C) the property has a value of \$5,000 or more, or is a
16 motor vehicle, vessel, or aircraft, and is moved across a state
17 or United States boundary in the commission or consumma-
18 tion of the offense;

19 “(D) the property is owned by, or is under the care, cus-
20 tody, or control of, a national credit institution;

21 “(E) the offense is committed by a misrepresentation of
22 United States ownership, guarantee, insurance, or other in-
23 terest of the United States in property involved in a trans-
24 action;

25 “(F) the offense is committed by impersonation of a
26 creditor of the United States;

27 “(G) the property is owned by, or is under the care, cus-
28 tody, or control of, an Indian tribe, band, community, group,
29 or pueblo which is subject to a federal statute relating to
30 Indian affairs, or a corporation, association, or group which
31 is organized under any such statute;

32 “(H) the property is owned by, or is under the care, cus-
33 tody, or control of, an employee welfare benefit plan or em-
34 ployee pension benefit plan subject to the Welfare and Pen-
35 sion Plans Disclosure Act, as amended (29 U.S.C. 301 et seq.);

36 “(I) the property is owned by, or is under the care, custody,
37 or control of, a trust fund established by an employee orga-
38 nization as defined in section 3 of the Welfare and Pension
39 Plans Disclosure Act (29 U.S.C. 302(a)(3)) to provide a
40 benefit to the members of such organization or to their fam-
41 ilies;

1 “(J) the property is owned by, or is under the care, custody,
2 or control of, a labor organization as defined in section 3 (i)
3 and (j) of the Labor-Management Reporting and Disclosure
4 Act of 1959 (29 U.S.C. 402 (i) and (j)), and the offense is
5 committed by an officer, member, or employee of, such a per-
6 son connected in any capacity with, such labor organization;

7 “(K) the offense is committed in a transaction for a loan,
8 advance of credit, or mortgage insured by the United States
9 Department of Housing and Urban Development;

10 “(L) the offense is committed by an agent or receiver of,
11 or a person connected in any capacity with, a small busi-
12 ness investment company, as defined in section 103 of the
13 Small Business Investment Act of 1958, as amended (15
14 U.S.C. 662), and the property is owned by, or is under the
15 care, custody, or control of, such small business investment
16 company;

17 “(M) the property is owned by, or is under the care, cus-
18 tody, or control of, a registered investment company, as de-
19 fined in section 2(a) of the Investment Company Act of 1940,
20 as amended (15 U.S.C. 80a);

21 “(N) the offense is committed by a futures commission mer-
22 chant as defined in section 2(a) of the Commodity Exchange
23 Act, as amended (7 U.S.C. 2), or an agent thereof, and the
24 property is that of a customer which is received by such fu-
25 tures commission merchant to margin, guarantee, or secure
26 trades or contracts of any customer, or the property has ac-
27 crued to such customer as the result of such trades or con-
28 tracts;

29 “(O) the property is owned by, or is under the care, cus-
30 tody, or control of, an organization engaged in interstate
31 commerce as a common carrier, and the offense is committed:

32 “(i) by a president, director, officer, or manager of
33 such common carrier; or

34 “(ii) by an agent of such common carrier riding in a
35 motor vehicle, vessel, or aircraft of such common carrier
36 which is moving in interstate commerce;

37 “(P) the offense is committed by an agent of, or a person
38 connected in any capacity with, an agency receiving financial
39 assistance under the Economic Opportunity Act of 1964, as
40 amended (42 U.S.C. 2701 et seq.), and the property is the

1 subject of a grant or contract of assistance pursuant to such
2 Act;

3 “(Q) the property consists of any part of the compensation
4 of a person employed in the construction, completion, repair,
5 or refurbishing of a federal public building, federal public
6 work, or building financed in whole or in part by a loan
7 or grant from the United States, and is obtained or retained
8 by fraud in relation to that person’s employment;

9 “(R) the offense is committed by a trustee, receiver, cus-
10 todian, marshal, or other court officer and the property con-
11 sists of any part of the estate of a bankrupt against whom a
12 petition has been filed under the Bankruptcy Act of 1898, as
13 amended (11 U.S.C. 1 et seq.) ; or

14 “(S) the property consists of a part of a grant, contract,
15 or other form of assistance pursuant to title I of the Omnibus
16 Crime Control and Safe Streets Act of 1968, as amended (42
17 U.S.C. 3701 et seq.), whether received directly or indirectly,
18 from the Law Enforcement Assistance Administration.

19 **“§ 1732. Receiving Stolen Property**

20 “(a) OFFENSE.—A person is guilty of an offense if he receives, buys,
21 possesses, retains, conceals, or disposes of property of another know-
22 ing that it has been stolen.

23 “(b) GRADING.—An offense described in this section is an offense
24 of the same class as that specified in section 1731(c) for the theft of
25 the same kind of property.

26 “(c) JURISDICTION.—There is federal jurisdiction over an offense
27 described in this section in a circumstance set forth in section 1731(d).

28 **“§ 1733. Proof Under Sections 1731 and 1732**

29 “In a prosecution under section 1732 or 1732:

30 “(a) possession of property recently stolen permits the in-
31 ference that the person in possession of the property knew it had
32 been stolen or in some way participated in its theft;

33 “(b) the purchase or sale of stolen property at a price sub-
34 stantially below its fair market value permits the inference that
35 the person buying or selling the property knew it had been
36 stolen;

37 “(c) in establishing that property constitutes or is part of an
38 interstate or foreign shipment within the meaning of section 1731
39 (d) (2) (B), proof of the designation in a way bill or other ship-
40 ping document of the places from which and to which a ship-

1 ment was made creates a presumption that the property was
2 shipped as indicated by such document.

3 **“§ 1734. Executing a Scheme to Defraud**

4 “(a) OFFENSE.—A person is guilty of an offense if, having devised
5 a scheme or artifice to defraud, or to obtain property by means of a
6 false or fraudulent pretense, representation, or promise, he engages
7 in conduct with intent to execute such scheme or artifice.

8 “(b) GRADING.—An offense described in this section is a Class D
9 felony.

10 “(c) JURISDICTION.—There is federal jurisdiction over an offense
11 described in this section if, in the course of executing such scheme or
12 artifice, the actor:

13 “(1) uses or causes the use of the United States mail;

14 “(2) uses or causes the use of any interstate or foreign com-
15 munication facility, including a facility of wire, radio, or televi-
16 sion communication; or

17 “(3) causes or induces any other person to travel in, or to be
18 transported in, interstate or foreign commerce.

19 **“§ 1735. Interfering with a Security Interest**

20 “(a) OFFENSE.—A person is guilty of an offense if, without author-
21 ity, he knowingly destroys, removes, conceals, encumbers, transfers, or
22 converts property which he owns or possesses subject to a security
23 interest, with intent to deprive the holder of the security interest of
24 the rights thereto and benefits thereof or to appropriate the property
25 to his own use or the use of another person.

26 “(b) GRADING.—An offense described in this section is:

27 “(1) a Class E felony if the property has a value in excess of
28 \$500;

29 “(2) a Class A misdemeanor in any other case.

30 “(c) JURISDICTION.—There is federal jurisdiction over an offense
31 described in this section if:

32 “(1) the offense is committed within the special jurisdiction of
33 the United States; or

34 “(2) the United States holds a security interest in the prop-
35 erty which is the subject of the offense.

36 **“§ 1741. Counterfeiting or Forgery**

37 “(a) OFFENSE.—A person is guilty of an offense if with intent to
38 deceive or harm a government or person he knowingly makes, utters,
39 or possesses a counterfeited or forged writing.

40 “(b) GRADING.—An offense described in this section is:

1 “(1) a Class C felony if the writing which is the subject of the
2 offense is:

3 “(A) a counterfeited or forged obligation of the United
4 States;

5 “(B) a counterfeited writing of the United States; or

6 “(C) a counterfeited security;

7 “(2) a Class D felony in any other case.

8 “(c) JURISDICTION.—There is federal jurisdiction over an offense
9 described in this section if:

10 “(1) the offense is committed within the special jurisdiction of
11 the United States;

12 “(2) the writing which is the subject of the offense is or purports
13 to be:

14 “(A) made or issued by or under the authority of, or guar-
15 anteed by, the United States;

16 “(B) a security made or issued by or under the authority of
17 a foreign government;

18 “(C) a security or a tax stamp which is transported across
19 a state or United States boundary in the commission or
20 consummation of the offense; or

21 “(D) a security issued by a national credit institution and
22 the offense is committed by an employee of such institution; or

23 “(3) the offense is committed for the purpose of influencing in
24 any way an action of the United States.

25 **“§ 1742. Unauthorized Use of a Writing**

26 “(a) OFFENSE.—A person is guilty of an offense if with intent to
27 deceive or harm a government or person he knowingly:

28 “(1) issues a writing without authority to do so; or

29 “(2) utters or possesses a writing which has been issued with-
30 out authority.

31 “(b) GRADING.—An offense described in this section is a Class D
32 felony.

33 “(c) JURISDICTION.—There is federal jurisdiction over an offense
34 described in this section if:

35 “(1) the writing which is the subject of the offense is or pur-
36 ports to be:

37 “(A) made or issued by or under the authority of, or guar-
38 anteed by, the United States;

39 “(B) a security made or issued by or under the authority
40 of a foreign government; or

1 “(C) a security issued by a national credit institution and
2 the offense is committed by an agent or employee of such
3 institution; or

4 “(2) the offense is committed for the purpose of influencing
5 in any way an action of the United States.

6 **“§ 1743. Trafficking in a Counterfeiting Implement**

7 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
8 makes, traffics in, or possesses a counterfeiting implement.

9 “(b) GRADING.—An offense described in this section is:

10 “(1) a Class C felony if the counterfeiting implement is suited
11 for the making of an obligation of the United States;

12 “(2) a Class D felony in any other case.

13 “(c) JURISDICTION.—There is federal jurisdiction over an offense
14 described in this section if:

15 “(1) the offense is committed within the special jurisdiction of
16 the United States;

17 “(2) the implement which is the subject of the offense is suited
18 for the making of:

19 “(A) a writing purporting to be made or issued by or under
20 the authority of, or guaranteed by, the United States;

21 “(B) a security purporting to be made or issued by or under
22 the authority of a foreign government;

23 “(3) the implement which is the subject of the offense is moved
24 across a state or United States boundary in the commission or
25 consummation of the offense.

26 **“§ 1744. Definitions for Sections 1741 through 1743**

27 “As used in sections 1741 through 1743:

28 “(a) ‘counterfeiting implement’ means any engraving, plate,
29 hub, stone, paper, tool, die, mold, ink, photograph, negative, or
30 other implement or impression, or any copy thereof, suited for
31 use and intended to be used for the making of any counterfeited
32 writing;

33 “(b) ‘counterfeited writing’ means a writing which purports
34 to be genuine but is not, because it has been falsely made or manu-
35 factured in its entirety;

36 “(c) ‘forged writing’ means a writing which purports to be
37 genuine but is not, because it has been falsely altered, completed,
38 signed, or endorsed, or contains a false addition thereto or inser-
39 tion therein, or is a combination of parts of two or more genuine
40 writings;

1 “(d) ‘obligation of the United States’ means a bond, certificate
2 of indebtedness, national bank currency, Federal Reserve note,
3 Federal Reserve bank note, coupon, United States note, Treasury
4 note, gold certificate, silver certificate, fractional note, certificate
5 of deposit, stamp, cancelled stamp, postage meter stamp, coin,
6 gold or silver bar coined or stamped at a mint or assay office of
7 the United States, or other representative of value of any denomi-
8 nation, issued pursuant to a federal statute, except bills, checks,
9 or drafts for money, or money orders, drawn by or upon an au-
10 thorized officer of the United States;

11 “(e) ‘security’ means an obligation of the United States; a note,
12 stock certificate, bond, debenture, bill, check, draft, warrant, money
13 order, money order blank, traveler’s check, letter of credit, ware-
14 house receipt, negotiable bill of lading, evidence of indebtedness,
15 certificate of interest in or participation in any profit-sharing
16 agreement, collateral-trust certificate, preorganization certificate
17 or subscription, transferable share, investment contract, voting-
18 trust certificate, or certificate of interest in tangible or intangible
19 property; an instrument evidencing ownership of goods, wares, or
20 merchandise, or transferring or assigning any right, title, or
21 interest in or to goods, wares, or merchandise; a certificate for,
22 receipt for, warrant or right to subscribe to or to purchase any
23 of the foregoing; an obligation, bank note, bill, coin, or bar issued
24 by a foreign government and intended by the law or usage of such
25 government to circulate as money; a security of a foreign govern-
26 ment; a postage stamp, revenue stamp, or uncanceled stamp,
27 whether or not demonetized, issued by a foreign government; or
28 any other instrument commonly known as a security;

29 “(f) ‘tax stamp’ includes any tax stamp, tax token, tax meter
30 imprint, or any similar evidence of an obligation running to a
31 government, or of the discharge thereof;

32 “(g) ‘utter’ means to issue, authenticate, transfer, publish, sell,
33 deliver, transmit, present, display, use, certify, or otherwise give
34 currency to;

35 “(h) ‘writing’ means (1) any security; (2) any paper, docu-
36 ment, or other instrument containing written or printed matter
37 or its equivalent; and (3) any symbol or evidence of value, right,
38 privilege, or identification which is capable of being used to the
39 advantage or disadvantage of a government or person; but does
40 not include writings which are protected against counterfeiting,
41 forgery, or unauthorized use by a statute outside this title.

1 **“§ 1751. Commercial Bribery**

2 “(a) OFFENSE.—A person is guilty of an offense if:

3 “(1) he knowingly offers, or agrees to give to an employee,
4 agent, or fiduciary of another person, or

5 “(2) as an employee, agent, or fiduciary, he knowingly solicits,
6 demands, accepts, or agrees to accept from another person who
7 is not his employer, principal or beneficiary

8 anything of value for or because of the recipient’s conduct in any
9 transaction or matter concerning the affairs of the employer, principal,
10 or beneficiary.

11 “(b) GRADING.—An offense described in this section is:

12 “(1) a Class E felony if whatever is offered, given, or agreed
13 to be given, or solicited, demanded, accepted, or agreed to be
14 accepted, has a value in excess of \$100;

15 “(2) a Class A misdemeanor in any other case.

16 “(c) JURISDICTION.—There is federal jurisdiction over an offense
17 described in this section if a participant in the offense is an employee,
18 agent, or fiduciary of:

19 “(1) a national credit institution;

20 “(2) a small business investment company as defined in section
21 103 of the Small Business Investment Act of 1958, as amended
22 (15 U.S.C. 662);

23 “(3) a bank holding company or savings and loan holding com-
24 pany or a person controlling a financial institution in such a
25 manner as to be a bank holding company or a savings and loan
26 holding company under the Bank Holding Company Act Amend-
27 ments of 1970 (12 U.S.C. 1841) or the Savings and Loan Holding
28 Company Amendments of 1967 (12 U.S.C. 1730a); or

29 “(4) a prime contractor holding a negotiated contract entered
30 into by the United States government for the furnishing of sup-
31 plies, materials, equipment, or services of any kind, or a sub-
32 contractor, as defined in section 2 of the Act of March 8, 1946,
33 as amended (41 U.S.C. 52), holding a subcontract under such a
34 prime contract.

35 **“§ 1752. Labor Bribery**

36 “(a) OFFENSE.—A person is guilty of an offense if:

37 “(1) as an employer, he knowingly offers, gives, or agrees to
38 give anything of value to a labor organization, or to an officer,
39 agent, or counsel of a labor organization, for or because of the

1 recipient's conduct in any transaction or matter concerning such
2 organization ;

3 "(2) he knowingly offers, gives, or agrees to give anything
4 of value to :

5 "(A) an administrator, agent, or counsel of an employee
6 welfare benefit plan or employee pension benefit plan ;

7 "(B) an employer, agent, or counsel of an employer, any
8 of whose employees are covered by such a plan ;

9 "(C) an agent, or counsel of an employee organization any
10 of whose members are covered by such a plan ; or

11 "(D) a person who, or an agent or counsel of an organiza-
12 tion which, provides benefit plan services to such a plan
13 for or because of the recipient's conduct relating to any transac-
14 tion or matter concerning such plan ;

15 "(3) he knowingly offers, gives, or agrees to give anything of
16 value to an officer, agent, or counsel of a labor organization for or
17 because of the recipient's conduct relating to :

18 "(A) the admission of any person to membership or a
19 class of membership or the issuing to any person of the indicia
20 of membership or a class of membership in the labor organiza-
21 tion ;

22 "(B) the work placement of any person by the labor or-
23 ganization ; or

24 "(C) any transaction or matter concerning the expendi-
25 ture, transfer, investment, or other use of the funds, moneys,
26 securities, property, or other assets of the labor organization ;
27 or

28 "(4) he knowingly solicits, demands, accepts, or agrees to accept
29 anything of value, the offering of which is, in fact, an offense
30 described in subsection (a) (1), (2), or (3).

31 "(b) DEFINITIONS.—As used in this section :

32 "(1) 'administrator' has the meaning set forth in section 5 of
33 the Welfare and Pension Plans Disclosure Act (29 U.S.C. 304
34 (b)) ;

35 "(2) 'anything of value' does not include salary, wages, fees,
36 or other compensation paid in the usual course of business ;

37 "(3) 'employee organization' has the meaning set forth in sec-
38 tion 3 of the Welfare and Pension Plans Disclosure Act (29 U.S.C.
39 302(a) (3)) ;

“(4) ‘employee welfare benefit plan’ has the meaning set forth in section 3 of the Welfare and Pension Plans Disclosure Act (29 U.S.C. 302(a)(1)), and includes any trust fund established by an employer or an employee organization or by both, to provide any benefit to the members of the organization or to their families;

“(5) ‘employee pension benefit plan’ has the meaning set forth in section 3 of the Welfare and Pension Plans Disclosure Act (29 U.S.C. 302(a)(2));

“(6) ‘employer’ means any employer or any group or association of employers or any person acting directly or indirectly as an employer or as an agent of or in the interest of an employer;

“(7) ‘labor organization’ has the meaning set forth in section 3 of the Labor Management Reporting Disclosure Act of 1959 (29 U.S.C. 402(i));

“(8) ‘officer’, when used with respect to a labor organization, has the meaning set forth in section 3 of the Labor Management Reporting Disclosure Act of 1959 (29 U.S.C. 402(n));

“(9) ‘work placement’ means a scheme, system, or method whereby members of a labor organization, or other persons gain employment or are referred for employment, and includes any such scheme, system, or method which establishes a priority or preference upon the basis of: seniority within the labor organization; experience or competency in a particular trade or field of employment; length of employment in a particular trade or field of employment or with specified employers or within a particular geographical area; performance on an examination relating to an individual’s ability to perform work in a particular trade or field of employment; or the date of registration on a list of persons available for work.

(c) **GRADING.**—An offense described in this section is a Class E felony.

“(d) **JURISDICTION.**—There is federal jurisdiction over an offense described in this section if the employer or labor organization is engaged in, or the employee welfare benefit plan or employee pension benefit plan covers employees engaged in, an industry affecting interstate or foreign commerce.

“§ 1753. Sports Bribery

“(a) **OFFENSE.**—A person is guilty of an offense if, with intent improperly to affect the outcome, result, or margin of victory of a publicly exhibited sporting contest, or to prevent the contest from being conducted in accordance with the rules and usages governing it:

1 “(1) he knowingly offers, gives, or agrees to give anything of
2 value to a participant, official, or other person associated with the
3 contest; or

4 “(2) as a participant, official, or other person associated with
5 the contest, he knowingly solicits, demands, accepts, or agrees to
6 accept anything of value.

7 “(b) DEFINITION.—As used in this section, ‘publicly exhibited sport-
8 ing contest’ means a contest in any sport involving human beings or
9 animals, whether as individual participants or teams of participants,
10 the occurrence of which is publicly announced in advance of the event.

11 “(c) GRADING.—An offense described in this section is a Class E
12 felony.

13 “(d) JURISDICTION.—There is federal jurisdiction over an offense
14 described in this section if:

15 “(1) the United States mail or a facility in interstate or foreign
16 commerce is used in the planning, promotion, management, execu-
17 tion, consummation, or concealment of the offense, or in the dis-
18 tribution of the proceeds of the offense; or

19 “(2) movement across a state or United States boundary by the
20 actor, an accomplice, or a participant, official, or other person as-
21 sociated with the contest, occurs in the course of the planning,
22 promotion, management, execution, consummation, or concealment
23 of the offense, or in the course of the distribution of the proceeds of
24 the offense.

25 **“§ 1761. Securities Violations**

26 “(a) OFFENSE.—A person is guilty of an offense if he:

27 “(1) knowingly violates section 5, 17, or 23 of the Securities
28 Act of 1933, as amended (15 U.S.C. 77e, 77q, or 77w); section 306
29 or 324 of the Trust Indenture Act of 1939, as amended (15 U.S.C.
30 77fff or 77xxx); or section 9(a) (1) through (5), or 10(b) of the
31 Securities Exchange Act of 1934, as amended (15 U.S.C. 78i(a)
32 (1) through (5) or 78j(b));

33 (2) knowingly makes a material false statement, or omits
34 or conceals a material fact in:

35 (A) a registration statement filed under title I of the
36 Securities Act of 1933, as amended (15 U.S.C. 77a et seq.);

37 “(B) an application, report, or document filed under the
38 Trust Indenture Act of 1939, as amended (15 U.S.C. 77aaa et
39 seq.);

40 “(C) an application, report, or document required to be
41 filed under the Securities Exchange Act of 1934, as amended

(15 U.S.C. 78a et seq.), or a regulation, rule, or order issued pursuant thereto or an undertaking contained in a registration statement as provided in section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

“(D) an application, report, document, account, or record filed or kept, or required to be filed or kept, under the provisions of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) or a regulation, rule, or order issued pursuant thereto;

“(E) a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or the keeping of which is required pursuant to section 31(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(a)); or

“(F) a registration, application, or report filed under section 203 or 204 of the Investment Advisers Act of 1940, as amended (15 U.S.C. 80b-3 or 80b-4);

“(3) knowingly violates section 7(c) or (d) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g(c) or (d)); section 301 of the Securities Exchange Act of 1934, as amended, as added October 26, 1970 (15 U.S.C. 78g(f)); section 10(2) or 14(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78j(a) or 78n(a)); section 5(c) or (e) of the Securities Acts Amendments of 1964 (15 U.S.C. 78n(c) or (e)); section 16(c) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78p(c)); section 12(h) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79l(h)); section 7, or 17(a), (d), or (e), or 21 of the Investment Company Act of 1940 (15 U.S.C. 80a-7, 80a-17(a), 80a-17(d), 80a-17(e), or 80a-21); section 206(1), (2), or (3) of the Investment Advisers Act of 1940, as amended (15 U.S.C. 80b-6(1), (2), or (3));

“(4) knowingly fails to file a report or document required to be filed under section 16(a) of the Securities Exchange Act, as amended (15 U.S.C. 78p(a)), or section 12(g) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q); or

“(5) recklessly violates:

(A) a regulation, rule, or order promulgated by the Securities and Exchange Commission under the authority

1 of the Securities Act of 1933, as amended (15 U.S.C. 77a et
2 seq.) ; or

3 “(B) any of the following provisions of:

4 “(i) the Securities Exchange Act of 1934, as amended :
5 section 5, 6, 8, 9(a) (6), 9(b), 9(c), 10(b), 11(a) through
6 (d), 12, 13, 14(a) through (d), 15(a), 15(b), 15(c) (1),
7 15(d), 15A, as added June 25, 1938, 17, 19, or 26 (15
8 U.S.C. 78e; 78f; 78h; 78i(a) (6), (b), or (c); 78j(b);
9 78k(a), (b), (c), or (d); 78l; 78m; 78n(a), (b), (c), or
10 (d); 78o(a), (b), (c) (1), (c) (2), or (d); 78o-3; 78q;
11 78s; or 78z);

12 “(ii) the Utility Holding Company Act of 1935:
13 section 4, 5, 6, 7, 8, 9, 10, 12(a) through (g), 12(i), 13,
14 14, 15, 17, 27(b), or 28 (15 U.S.C. 79d, 79e, 79f, 79g,
15 79h, 79i, 79j, 79l(a) through (g), 79l(i), 79m, 79n, 79o,
16 79q(c), 79z-1(b), or 79z-2);

17 “(iii) the Investment Company Act of 1940, as amend-
18 ed: section 8, 9, 10, 11, 18, 19, 20, 22(c) through (g), 23
19 through 28, 30(a) through (e), 31, 34, 35, 46, or 48(b)
20 (15 U.S.C. 80a-8, 80a-9, 80a-10, 80a-11, 80a-18, 80a-19,
21 80a-20, 80a-22(c) through (g), 80a-23, 80a-24, 80a-25,
22 80a-26, 80a-27, 80a-28, 80a-29(a) through (e), 80a-30,
23 80a-33, 80a-34, 80a-45, or 80a-47(b)); or

24 “(iv) the Investment Advisers Act of 1940, as amend-
25 ed: section 203, 204, 205, 206(4), or 208 (15 U.S.C. 80b-3,
26 80b-4, 80b-5, 80b-6(4), or 80b-8)

27 or any regulation, rule, or order issued pursuant thereto.

28 “(b) GENERAL PROVISIONS.—The provisions of section 1346 which
29 apply to section 1343 (Making a False Statement) apply also to this
30 section.

31 “(c) GRADING.—An offense described in this section is:

32 “(1) a Class D felony in the circumstances set forth in subsec-
33 tion (a) (1) or (2);

34 “(2) a Class E felony in the circumstances set forth in subsec-
35 tion (a) (3) or (4);

36 “(3) a Class A misdemeanor in the circumstances set forth in
37 subsection (a) (5).

38 **“§ 1762. Failing to Report Currency or Foreign Transactions**

39 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
40 fails to file a report required to be filed under the provisions of the

1 Currency and Foreign Transactions Reporting Act (31 U.S.C. 1051
2 et seq.).

3 “(b) GRADING.—An offense described in this section is:

4 “(1) a Class D felony if the offense is committed:

5 “(A) in furtherance of any other violation of federal law;

6 or

7 “(B) as part of a pattern of illegal activity involving trans-
8 actions exceeding \$100,000 in any twelve-month period;

9 “(2) a Class A misdemeanor in any other case.

10 Notwithstanding the provisions of section 2201, the authorized
11 maximum fine for an offense which is a Class D felony under this
12 section is \$500,000.

13 **“§ 1763. Commodity Exchange Violations**

14 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
15 violates section 9(b) of the Commodity Exchange Act as amended
16 (7 U.S.C. 13(b)).

17 “(b) GRADING.—An offense described in this section is a Class E
18 felony.

19 **“§ 1764. Bankruptcy Fraud**

20 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
21 deceive a court or an officer thereof or to harm or deceive a creditor of
22 a bankrupt, he knowingly:

23 “(1) transfers or conceals property belonging to the estate of
24 a bankrupt;

25 “(2) receives a material amount of property from a bankrupt
26 after the filing of a bankruptcy proceeding;

27 “(3) transfers or conceals, in contemplation of a bankruptcy
28 proceeding, his own property or the property of another;

29 “(4) alters, destroys, mutilates, conceals, or makes a false entry
30 in a document affecting or relating to the property or affairs of a
31 bankrupt, or withholds such a document from the receiver, trustee,
32 or other officer of the court entitled to its possession; or

33 “(5) offers, gives, or agrees to give, or solicits, demands, accepts,
34 or agrees to accept, anything of value for or because of acting or
35 forbearing to act in a bankruptcy proceeding.

36 “(b) DEFINITIONS.—As used in this section:

37 “(1) ‘bankrupt’ means a debtor by or against whom a petition
38 has been filed pursuant to the Bankruptcy Act of 1898, as amended
39 (11 U.S.C. 1 et seq.);

1 “(2) ‘bankruptcy proceeding’ includes any proceeding, arrange-
2 ment, or plan pursuant to the Bankruptcy Act of 1898, as amended
3 (11 U.S.C. 1 et seq.) ;

4 “(3) ‘harm’ means to cause loss of, deprivation of, or reduction
5 in value of, any economic benefit.

6 “(c) GRADING.—An offense described in this section is a Class D
7 felony.

8 **“§ 1765. Fraud in a Regulated Industry**

9 “(a) OFFENSE.—A person is guilty of an offense if, with intent
10 to defraud, he knowingly :

11 “(1) violates section 9, 10, 11, 14, or 17 of the Poultry Prod-
12 ucts Inspection Act as amended (21 U.S.C. 458, 459, 460, 463,
13 or 466) ;

14 “(2) violates section 10, 11, 19, 20, 24, or 204 of the Federal
15 Meat Inspection Act as amended (21 U.S.C. 610, 611, 619, 620,
16 624, or 644) ;

17 “(3) violates section 8 of the Egg Products Inspection Act
18 as amended (21 U.S.C. 1037) ;

19 “(4) violates section 301 of the Federal Food, Drug, and Cos-
20 metic Act as amended (21 U.S.C. 331) ;

21 “(5) violates section 3 of the Federal Environmental Con-
22 trol Act of 1972 (7 U.S.C.) by using or revealing informa-
23 tion relative to a formula or product acquired under the author-
24 ity of such section ; or

25 “(6) infringes for profit a copyright on a sound recording
26 secured pursuant to title 17.

27 “(b) GRADING.—An offense described in this section is a Class E
28 felony.

29 **“§ 1766. Adulterated Food Product Violations**

30 “(a) OFFENSE.—A person is guilty of an offense if in the distribution
31 of an adulterated article he violates :

32 “(1) section 9, 10, 11, 14, or 17 of the Poultry Products Inspec-
33 tion Act as amended (21 U.S.C. 458, 459, 460, 463, or 466) ;

34 “(2) section 10, 11, 19, 20, 24, or 204 of the Federal Meat Inspec-
35 tion Act as amended (21 U.S.C. 610, 611, 619, 620, 624, or 644) ; or

36 “(3) section 8 of the Egg Products Inspection Act (21 U.S.C.
37 1037).

38 “(b) DEFINITION.—The term ‘adulterated’, as used :

39 “(1) in subsection (a)(1) of this section, has the meaning set

forth in section 4(g) of the Poultry Products Inspection Act, as amended (21 U.S.C. 453(g)), except for paragraph 8 thereof;

“(2) in subsection (a)(2) of this section, has the meaning set forth in section 2(m) of the Federal Meat Inspection Act, as amended (21 U.S.C. 601(m)), except for paragraph 8 thereof;

“(3) in subsection (a)(3) of this section, has the meaning set forth in section 4(a) of the Egg Products Inspection Act, as amended (21 U.S.C. 1033(a)), except for paragraph 8 thereof.

“(c) GRADING.—An offense described in this section is a Class E felony.

§ 1771. Food Stamp Coupon Offenses

“(a) OFFENSE.—A person is guilty of an offense if, in violation of the Food Stamp Act of 1964, as amended (7 U.S.C. 2011 et seq.), or a regulation, rule, or order issued pursuant thereto, he:

“(1) knowingly uses, transfers, acquires, alters, or possesses a food stamp coupon or an authorization to purchase card; or

“(2) presents or causes to be presented a food stamp coupon for payment or redemption knowing such coupon to have been used, transferred, acquired, altered, or possessed in violation of such Act.

“(b) DEFINITIONS.—As used in this section:

“(1) ‘coupon’ has the meaning set forth in section 2 of the Food Stamp Act of 1964, as amended (7 U.S.C. 2012(c)).

“(2) ‘authorization to purchase card’ has the meaning set forth in section 2 of the Food Stamp Act of 1964, as amended (7 U.S.C. 2012(m)).

“(c) GRADING.—An offense described in this section is:

“(1) a Class E felony if the coupons are of an aggregate face value of \$500 or more;

“(2) a Class A misdemeanor in any other case.

Chapter 18.—OFFENSES INVOLVING PUBLIC ORDER, SAFETY, HEALTH, AND WELFARE

“Sec.

“1801. Inciting or Leading a Riot.

“1802. Arming a Rioter.

“1803. Engaging in a Riot.

“1804. Failing to Obey a Riot Control Order.

“1805. Definition for Sections 1801 through 1804.

“1811. Explosives Violations.

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“1813. Using or Possessing a Weapon in the Course of a Crime.

“1814. Possessing a Weapon aboard an Aircraft.

“1821. Trafficking in Heroin or Morphine.

“1822. Trafficking in Drugs.

“1823. Possessing Drugs.

- "1824. Violating a Drug Regulation.
- "1825. Definitions for Sections 1821 through 1824.
- "1831. Engaging in a Gambling Business.
- "1832. Facilitating or Profiting from Gambling.
- "1841. Conducting a Prostitution Business.
- "1851. Disseminating Obscene Material.
- "1861. Racketeering.
- "1862. Leading a Continuing Criminal Syndicate.
- "1863. Facilitating an Organized Crime Activity by Violence.
- "1871. Disorderly Conduct.
- "1881. Violating State or Local Law in an Enclave.

1 **"§ 1801. Inciting or Leading a Riot**

2 “(a) OFFENSE.—A person is guilty of an offense if:

3 “(1) he incites a riot; or

4 “(2) during a riot he urges participation in, leads, or gives com-
5 mands, instructions, or directions in furtherance of, the riot.

6 “(b) GRADING.—An offense described in this section is:

7 “(1) a Class D felony if the riot involves persons in a facility
8 which is used for official detention;

9 “(2) a Class E felony in any other case.

10 “(c) JURISDICTION.—There is federal jurisdiction over an offense
11 described in this section if:

12 “(1) the offense is committed within the special jurisdiction of
13 the United States;

14 “(2) the riot involves persons in a federal facility used for
15 official detention;

16 “(3) the United States mail or a facility of interstate or foreign
17 commerce is used in the course of the planning, promotion, man-
18 agement, execution, consummation, or concealment of the offense;

19 “(4) movement of a person across a state or United States
20 boundary occurs in the course of the planning, promotion, manage-
21 ment, execution, consummation, or concealment of the offense; or

22 “(5) the riot obstructs a federal government function.

23 **"§ 1802. Arming a Rioter**

24 “(a) OFFENSE.—A person is guilty of an offense, if, with intent
25 to promote a riot, he supplies, or teaches the preparation or use of,
26 a firearm, destructive device, or other dangerous weapon.

27 “(b) GRADING.—An offense described in this section is:

28 “(1) a Class D felony if it involves the supplying of a firearm
29 or destructive device;

30 “(2) a Class E felony in any other case.

31 “(c) JURISDICTION.—There is federal jurisdiction over an offense
32 described in this section:

1 “(1) in a circumstance set forth in section 1801(c); or

2 “(2) if the firearm, destructive device, or other dangerous
3 weapon supplied is moved across a state or United States bound-
4 ary in the commission or consummation of the offense.

5 **“§ 1803. Engaging in a Riot**

6 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
7 engages in a riot.

8 “(b) GRADING.—An offense described in this section is:

9 “(1) a Class A misdemeanor if the riot involves persons in a
10 facility used for official detention;

11 “(2) a Class B misdemeanor in any other case.

12 “(c) JURISDICTION.—There is federal jurisdiction over an offense
13 described in this section if:

14 “(1) the offense is committed within the special jurisdiction of
15 the United States;

16 “(2) the offense is committed in a federal facility used for
17 official detention; or

18 “(3) the riot obstructs a federal government function.

19 **“§ 1804. Failing to Obey a Riot Control Order**

20 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
21 disobeys an order of a public servant to move, disperse, or refrain from
22 specified activity in the vicinity of a riot or an impending riot, and
23 the order is, in fact, reasonably designed to prevent, control, or ter-
24 minate a riot or to promote the safety of persons or property.

25 “(b) GRADING.—An offense described in this section is an infraction.

26 “(c) JURISDICTION.—There is federal jurisdiction over an offense
27 described in this section if:

28 “(1) the offense is committed within the special jurisdiction
29 of the United States;

30 “(2) the public servant is a federal public servant; or

31 “(3) the riot obstructs, or the impending riot would obstruct,
32 a federal government function.

33 **“§ 1805. Definition for Sections 1801 through 1804**

34 “As used in sections 1801 through 1804, ‘riot’ means a public dis-
35 turbance involving an assemblage of five or more persons which, by
36 violent and tumultuous conduct, creates a grave danger of injury or
37 damage to persons or property, or obstructs a government function.

38 **“§ 1811. Explosives Violations**

39 “(a) OFFENSE.—A person is guilty of an offense if he:

40 “(1) transports or possesses an explosive with intent that it

1 be used, or with knowledge that it may be used, to commit a
2 felony;

3 “(2) knowingly violates a provision included in subsections
4 (a) through (i) of section 239 of the Criminal Code Reform Act
5 of 1973 (15 U.S.C.); or

6 “(3) possesses an explosive in a government building.

7 “(b) DEFINITION.—As used in this section, ‘explosive’ includes: a
8 destructive device other than a destructive device utilizing poison
9 gas; gunpowders, smokeless powders, or powders used for blasting
10 materials; and fuzes, detonators, or other detonating agents.

11 “(c) DEFENSE.—It is a defense to a prosecution under subsection
12 (a) (3) that the possession was in conformity with the written con-
13 sent of the government agency or person responsible for the manage-
14 ment of such building.

15 “(d) GRADING.—An offense described in this section is:

16 “(1) a Class D felony in the circumstances set forth in subsec-
17 tions (a) (1) and (2);

18 “(2) a Class A misdemeanor in the circumstances set forth in
19 subsection (a) (3).

20 “(e) JURISDICTION.—There is federal jurisdiction over an offense
21 described in:

22 “(1) subsection (a) (1) if the explosive is being transported, or
23 has been transported, in interstate or foreign commerce;

24 “(2) subsection (a) (2) pursuant to the purpose expressed by
25 Congress in section 1101 of the Organized Crime Control Act
26 of 1970 (Public Law 91-452);

27 “(3) subsection (a) (3) if the building is owned by, or is under
28 the care, custody, or control of, the United States.

29 **“§ 1812. Firearms Violations**

30 “(a) OFFENSE.—A person is guilty of an offense if he:

31 “(1) transports or possesses a firearm or ammunition with in-
32 tent that it be used, or with knowledge that it may be used, to
33 commit a felony;

34 “(2) knowingly violates section 247 or 248 of the Criminal Code
35 Reform Act of 1973 (15 U.S.C.);

36 “(3) knowingly violates section 5861 of the Internal Revenue
37 Code of 1954, as amended (26 U.S.C. 5861); or

38 “(4) knowingly violates section 253 of the Criminal Code Re-
39 form Act of 1973 (15 U.S.C.).

1 “(b) DEFINITION.—As used in this section, ‘firearm’ includes a
2 frame or receiver of a firearm and a firearm silencer or muffler.

3 “(c) GRADING.—An offense described in this section is:

4 “(1) a Class D felony in the circumstances set forth in sub-
5 section (a) (1) through (3);

6 “(2) a Class E felony in the circumstances set forth in sub-
7 section (a) (4).

8 “(d) JURISDICTION.—There is federal jurisdiction over an offense
9 described in:

10 “(1) subsection (a) (1) if the firearm or ammunition is being
11 transported, or has been transported, in interstate or foreign
12 commerce;

13 “(2) subsection (a) (2) pursuant to the special findings of Con-
14 gress expressed in sections 901 and 1201 of the Omnibus Crime
15 Control and Safe Streets Act of 1968 (Public Law 90-351), and
16 the purpose expressed by Congress in section 101 of the Gun Con-
17 trol Act of 1968 (Public Law 90-618);

18 “(3) subsection (a) (3) pursuant to the power of the United
19 States to levy and collect taxes;

20 “(4) subsection (a) (4) pursuant to the special findings of
21 Congress in section 252 of the Criminal Code Reform Act of
22 1973 (15 U.S.C.).

23 **“§ 1813. Using or Possessing a Weapon in the Course of a Crime**

24 “(a) OFFENSE.—A person is guilty of an offense if, during the
25 commission of or during the immediate flight from the commission of
26 any crime, he knowingly:

27 “(1) displays or otherwise uses a firearm or destructive device;

28 “(2) possesses a firearm or destructive device; or

29 “(3) displays or otherwise uses:

30 “(A) a dangerous weapon other than a firearm or destruc-
31 tive device; or

32 “(B) an imitation of a firearm or destructive device.

33 “(b) GRADING.—An offense described in this section is:

34 “(1) a Class D felony in the circumstances set forth in subsec-
35 tion (a) (1), unless the defendant has previously been convicted of
36 a federal or state offense during the commission of which he dis-
37 played or otherwise used a dangerous weapon, in which case it is
38 a Class C felony;

39 “(2) a Class E felony in the circumstances set forth in subsec-

tion (a) (2) or (3), unless the defendant has previously been convicted of a federal or state offense during the commission of which he displayed or otherwise used a dangerous weapon, in which case it is a Class D felony.

Notwithstanding the provisions of part III of this title, the court may not sentence the defendant to probation but shall sentence him to the maximum term of imprisonment authorized by section 2301, and the limitations on consecutive terms of imprisonment set forth in section 2303 are inapplicable to a sentence imposed for an offense described in this section.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the offense occurs during the commission of or during the immediate flight from the commission of any other offense over which federal jurisdiction exists.

“§ 1814. Possessing a Weapon aboard an Aircraft

“(a) OFFENSE.—A person is guilty of an offense if, in fact, he possesses or places a concealed dangerous weapon aboard an aircraft.

“(b) DEFENSE.—It is a defense to a prosecution under this section that the person’s conduct was authorized under a regulation issued by the Administrator of the Federal Aviation Agency.

“(c) GRADING.—An offense described in this section is a Class A misdemeanor.

“(d) JURISDICTION.—There is federal jurisdiction over an offense described in this section if the offense is committed within the special aircraft jurisdiction of the United States.

“§ 1821. Trafficking in Heroin or Morphine

“(a) OFFENSE.—A person is guilty of an offense if, except as authorized by the provisions of the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), he knowingly :

“(1) manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute, or dispense, heroin or morphine;

“(2) creates, distributes, dispenses, or possesses with intent to distribute or dispense, a counterfeit substance containing heroin or morphine;

“(3) imports into the United States or exports heroin or morphine, or possesses heroin or morphine aboard a vessel, aircraft, or motor vehicle arriving in or departing from the United States or the customs territory of the United States;

1 “(4) manufactures or distributes heroin or morphine for im-
2 port into the United States; or

3 “(5) possesses four ounces or more of heroin or morphine.

4 “(b) GRADING.—An offense described in this section :

5 “(1) a Class C felony in the circumstances set forth in section
6 (a) (1), (2), (3), or (4) if the heroin or morphine weighs less
7 than four ounces, unless the offense consists of distributing heroin
8 or morphine to a person who is less than eighteen years old and
9 who is at least five years younger than the defendant, in which
10 case it is a Class B felony, or unless the offense was committed
11 after the defendant had been convicted of a felony under federal,
12 state, or foreign law relating to heroin or morphine, or while he
13 was released pending trial for an offense described in subsection
14 (a), in which case it is a Class A felony; notwithstanding the
15 provisions of part III of this title, the court may not sentence
16 the defendant to probation but shall sentence him to a term of
17 imprisonment of not less than five years for a Class C felony, not
18 less than seven years for a Class B felony, and not less than ten
19 years for a Class A felony;

20 “(2) a Class A felony if the heroin or morphine weighs four
21 ounces or more; notwithstanding the provisions of part III of this
22 title, the court may not sentence the defendant to probation but
23 shall sentence him to a term of imprisonment of not less than ten
24 years, unless the offense was committed after the defendant had
25 been convicted of a felony under federal, state, or foreign law
26 relating to heroin or morphine, or while he was released pending
27 trial for an offense described in subsection (a), in which case the
28 court shall sentence him to a term of imprisonment for life, and
29 in which case, notwithstanding the provisions of chapter 311, the
30 defendant is not eligible for parole.

31 “(c) JURISDICTION.—There is federal jurisdiction over an offense
32 described in this section pursuant to the findings of Congress expressed
33 in section 101 of the Controlled Substances Act (21 U.S.C. 801).

34 **“§ 1822. Trafficking in Drugs**

35 “(a) OFFENSE.—A person is guilty of an offense if, except as au-
36 thorized by the provisions of the Controlled Substances Act (21 U.S.C.
37 801 et seq.) or the Controlled Substances Import and Export Act (21
38 U.S.C. 951 et seq.), he knowingly :

39 “(1) manufactures, distributes, dispenses, or possesses with

1 intent to manufacture, distribute, or dispense, a controlled sub-
2 stance;

3 “(2) creates, distributes, dispenses, or possesses with intent to
4 distribute or dispense, a counterfeit substance;

5 “(3) imports into the United States or exports a controlled sub-
6 stance, or possesses a controlled substance aboard a vessel, aircraft,
7 or motor vehicle arriving in or departing from the United States
8 or the customs territory of the United States; or

9 “(4) manufactures or distributes a controlled substance for im-
10 port into the United States.

11 “(b) GRADING.—An offense described in this section is:

12 “(1) a Class C felony if the controlled substance is a narcotic
13 drug listed in Schedule I or II, other than heroin or morphine;

14 “(2) a Class D felony if the controlled substance is a substance
15 listed in Schedule I or II, other than a narcotic drug or less than
16 four ounces of marihuana distributed for no remuneration, or if
17 the controlled substance is listed in Schedule III;

18 “(3) a Class E felony if the controlled substance is listed in
19 Schedule IV;

20 “(4) a Class A misdemeanor if the controlled substance is listed
21 in Schedule V, or is less than four ounces of marihuana distributed
22 for no remuneration;

23 unless prior to the commission of the offense the defendant had been
24 convicted of violating a federal or state law relating to a controlled
25 substance listed in the same Schedule or a Schedule of a lower number,
26 or unless the offense consists of distributing a controlled substance to
27 a person who is less than eighteen years old and who is at least five
28 years younger than the defendant, in either of which cases the offense
29 is of the class next above that otherwise specified, and both of which
30 cases the offense is of a class two classes above that otherwise specified.

31 “(c) JURISDICTION.—There is federal jurisdiction over an offense
32 described in this section pursuant to the findings of Congress expressed
33 in section 101 of the Controlled Substances Act (21 U.S.C. 801).

34 **“§ 1823. Possessing Drugs**

35 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
36 possesses a controlled substance unless—

37 “(1) such substance was obtained directly from, or pursuant
38 to a valid prescription or order issued by, a practitioner acting
39 possesses a controlled substance unless:

“(2) such possession was authorized by the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

“(b) GRADING.—An offense described in this section is a Class A misdemeanor, unless prior to the commission of the offense the defendant had been convicted of violating a federal or state law relating to controlled substances, in which it is a Class E felony. Notwithstanding the provisions of part III of this title, a person found guilty of an offense under this section may be sentenced pursuant to the provisions of chapter 405.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section pursuant to the findings of Congress expressed in section 101 of the Controlled Substances Act (21 U.S.C. 801).

“§ 1824. Violating a Drug Regulation

“(a) OFFENSE.—A person is guilty of an offense if he knowingly violates:

“(1) section 402(a) or (b) of the Controlled Substances Act (21 U.S.C. 842(a) or (b));

“(2) section 403(a)(1), (2), (3), or (5) of the Controlled Substances Act (21 U.S.C. 843(a)(1), (2), (3), or (5)); or

“(3) section 1004 of the Controlled Substances Import and Export Act (21 U.S.C. 954).

“(b) GRADING.—An offense described in this section is:

“(1) a Class A misdemeanor in the circumstances set forth in subsection (a)(1) or (3), unless prior to the commission of the offense the defendant had been convicted of violating a federal or state law relating to controlled substances, in which case it is a Class E felony;

“(2) a Class E felony in the circumstances set forth in subsection (a)(2), unless prior to the commission of the offense the defendant had been convicted of violating a federal or state law relating to controlled substances, in which case it is a Class D felony.

“(c) JURISDICTION.—There is federal jurisdiction over an offense described in this section pursuant to the findings of Congress expressed in section 101 of the Controlled Substances Act (21 U.S.C. 801).

“§ 1825. Definitions for Sections 1821 through 1824

“As used in sections 1821 through 1824:

“(a) ‘controlled substance’, ‘counterfeit substance’, ‘distribute’,

1 'manufacture', 'marihuana', narcotic drug', and 'practitioner' have
2 the meanings set forth in section 102 of the Controlled Substances
3 Act (21 U.S.C. 802) ;

4 "(b) 'customs territory' and 'import' have the meanings set
5 forth in section 1001 of the Controlled Substances Import and
6 Export Act (21 U.S.C. 951) ;

7 "(c) 'dispense' means to deliver a controlled substance to an
8 ultimate user or research subject by, or pursuant to the order of,
9 a practitioner, including the prescribing or administering of a
10 controlled substance and the packaging, labelling, or compound-
11 ing necessary to prepare the substance for such delivery ;

12 "(d) 'imports into the United States' means to import into the
13 United States from any place outside the United States or into
14 the customs territory of the United States from any place outside
15 the customs territory of the United States but within the United
16 States ;

17 "(e) 'Schedule I', 'Schedule II', 'Schedule III', 'Schedule IV',
18 and 'Schedule V' refer to the schedules of controlled substances
19 established by section 202 of the Controlled Substances Act (21
20 U.S.C. 812) ; and

21 "(f) 'heroin or morphine' means a mixture or substance con-
22 taining any amount of heroin or morphine which is a controlled
23 substance listed in Schedule I or II.

24 **"§ 1831. Engaging in a Gambling Business**

25 "(a) OFFENSE.—A person is guilty of an offense if he :

26 "(1) owns, controls, manages, supervises, directs, conducts, fi-
27 nances, or otherwise engages in a gambling business ; or

28 "(2) receives lay-off wagers or otherwise provides reinsurance
29 in relation to persons engaged in gambling.

30 "(b) DEFINITION.—As used in this section, 'gambling business' means
31 a business involving gambling of any kind :

32 "(1) in which, in fact, five or more persons are engaged ; and

33 "(2) which, in fact, has been or remains in substantially contin-
34 uous operation for a period of thirty days or more or which, in
35 fact, takes in \$2,000 or more in any single day.

36 "(c) DEFENSE.—It is a defense to a prosecution under this section
37 that the kind of gambling or the gambling business, the manner in
38 which the business was operated, and the defendant's participation
39 therein, were legal in all places in which it was carried on, including
40 any place from which a customer placed a wager with, or otherwise pa-

tronized, the gambling business, as well as any place in which the wager was received or to which it was transmitted.

“(d) ESTABLISHING PROBABLE CAUSE.—If five or more persons are engaged in a gambling business, and such business operates for two or more successive days, then, solely for the purpose of obtaining warrants for arrests, interceptions of communications, and other searches and seizures, probable cause that the business takes in \$2,000 or more in any single day shall be deemed to be established.

“(e) GRADING.—An offense described in this section in a Class D felony.

“(f) JURISDICTION.—There is federal jurisdiction over an offense described in this section pursuant to the special findings of Congress expressed in section 801 of the Organized Crime Control Act of 1970 (Public Law 91-452).

“§ 1832. Facilitating or Profiting from Gambling

“(a) OFFENSE.—A person is guilty of an offense if he knowingly :

“(1) carries or sends a gambling device or transmits gambling information into a state from any place outside such state ;

“(2) carries or sends the proceeds of gambling from within a state to any place outside such state ; or

“(3) otherwise establishes, promotes, manages, or carries on an enterprise involving gambling.

“(b) DEFINITIONS.—As used in this section :

“(1) ‘gambling device’ means :

“(A) any device covered by section 1 of the Act of January 2, 1951, as amended (15 U.S.C. 1171), and not excluded by section 9(2) or (3) of the Gambling Devices Act of 1962 (15 U.S.C. 1178(2) or (3)) ; or

“(B) any record, paraphernalia, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, bingo or keno games, lotteries, policy, bolita, numbers, or similar games, or any equipment for carrying on card or dice games other than cards or dice used in such games ;

“(2) ‘gambling information’ means information consisting of, or assisting in, the placing of a bet or wager, or the purchase of a ticket in a lottery or similar game of chance.

“(c) DEFENSES.—It is a defense to a prosecution under this section that :

1 “(1) the gambling device was carried or sent into, or was en
2 route to, a state, or any part thereof, where the use of such a
3 gambling device was legal;

4 “(2) the defendant was a common or public contract carrier,
5 or an employee thereof, carrying the gambling device in the usual
6 course of business;

7 “(3) the gambling device was a ticket or other embodiment of
8 the claim of a player or bettor which was carried or sent by him;

9 “(4) the transmission of the gambling information was made
10 in connection with news reporting, or the transmission was from
11 a place in which the type of gambling to which the gambling
12 information relates was legal into a state, or any part thereof,
13 where such gambling was legal; or

14 “(5) the defendant:

15 “(A) established, promoted, managed, or carried on an
16 enterprise involving; or

17 “(B) obtained the proceeds of gambling as a result of his
18 lawful participation in

19 gambling which was legal in all places in which it was carried
20 on, including the place from which the defendant placed a wager
21 or otherwise participated in gambling activity, as well as any
22 place in which his wager was received or to which it was
23 transmitted.

24 “(d) GRADING.—An offense described in this section is a Class E
25 felony.

26 “(e) JURISDICTION.—There is federal jurisdiction over an offense
27 described in this section if:

28 “(1) movement of any person across a state or United States
29 boundary occurs in the course of the commission or consummation
30 of the offense; or

31 “(2) the United States mail or a facility of interstate or for-
32 eign commerce is used in the commission or consummation of the
33 offense.

34 **“§ 1841. Conducting a Prostitution Business**

35 “(a) OFFENSE.—A person is guilty of an offense if he owns, controls,
36 manages, supervises, directs, finances, procures patrons for, or recruits
37 participants in, a prostitution business.

38 “(b) DEFINITIONS.—As used in this section:

39 “(1) ‘prostitution’ means engaging in a sexual act, as defined in
40 section 1636(a), as consideration for anything of pecuniary value;

1 “(2) ‘prostitution business’ means a business which derives
2 funds from prostitution by a person acting under the control,
3 management, supervision, or direction of another person.

4 “(c) DEFENSE.—It is a defense to a prosecution under this section
5 that the prostitution business did not involve sexual conduct in
6 violation of the laws of the state or political subdivision thereof in
7 which the conduct occurred.

8 “(d) GRADING.—An offense described in this section is:

9 “(1) a class D felony if the business involves prostitution, or
10 recruiting for prostitution, of a person less than eighteen years
11 old;

12 “(2) a class E felony in any other case.

13 “(e) JURISDICTION.—There is federal jurisdiction over an offense
14 described in this section of:

15 “(1) the United States mail or a facility of interstate or foreign
16 commerce is used in the planning, promotion, management, ex-
17 ecution, consummation, or concealment of the offense, or in the
18 distribution of the proceeds of the offense; or

19 “(2) movement of any person across a state or United States
20 boundary occurs in the course of the planning, promotion, man-
21 agement, execution, consummation, or concealment of the offense,
22 or in the course of the distribution of the proceeds of the offense.

23 **“§ 1851. Disseminating Obscene Material**

24 “(a) OFFENSE.—A person is guilty of an offense if he knowingly:

25 “(1) disseminates obscene material; or

26 “(2) produces, transports, or sends obscene material with intent
27 that it be disseminated.

28 “(b) DEFINITIONS.—As used in this section:

29 “(1) ‘disseminate’ means to transfer, distribute, dispense, dis-
30 play, exhibit, broadcast, or lend, whether for profit or otherwise;

31 “(2) ‘obscene material’ includes:

32 “(A) an explicit representation, or detailed written or
33 verbal description, of an act of sexual intercourse, including
34 genital-genital, anal-genital, or oral-genital intercourse,
35 whether between human beings or between a human being
36 and an animal, or of flagellation, torture, or other violence
37 indicating a sadomasochistic sexual relationship;

38 “(B) an explicit, close-up representation of a human
39 genital organ;

1 “(C) a device designed and marketed as useful primarily
2 for stimulation of the human genital organs; and

3 “(D) an advertisement, notice, announcement, or other
4 method by which information is given as to the manner in
5 which any of the materials described in subparagraphs (A),
6 (B), or (C) may be procured

7 unless it constitutes a minor portion of the whole product of which
8 it is a part, is reasonably necessary and appropriate to the integ-
9 rity of the product as a whole to fulfill an artistic, scientific, or
10 literary purpose, and is not included primarily to stimulate
11 prurient interest.

12 “(c) AFFIRMATIVE DEFENSES.—It is an affirmative defense to pros-
13 ecution under this section that dissemination of the material was
14 restricted to:

15 “(1) a person associated with an institution of higher learning,
16 either as a member of the faculty or as a matriculated student,
17 teaching or pursuing a course of study related to such material; or

18 “(2) a person whose receipt of such material was authorized
19 in writing by a licensed medical practitioner or psychiatrist.

20 “(d) DEFENSES PRECLUDED.—It is not a defense to a prosecution
21 under this section:

22 “(1) that the defendant did not believe the material dissemi-
23 nated to be obscene if he had general knowledge of the content
24 of the material disseminated; or

25 “(2) that the defendant did not knowingly disseminate the ma-
26 terial to a person other than a person described in subsection (c),
27 if he failed to take reasonable and appropriate precautions to
28 insure against inadvertent dissemination to persons other than
29 those described in subsection (c).

30 “(e) GRADING.—An offense described in this section is a Class E
31 felony.

32 “(f) JURISDICTION.—There is federal jurisdiction over an offense
33 described in this section if:

34 “(1) the offense is committed within the special jurisdiction
35 of the United States;

36 “(2) the United States mail or a facility in interstate or foreign
37 commerce is used in the commission or consummation of the
38 offense; or

39 “(3) the property which is the subject of the offense is moved
40 across a state or United States boundary.

1 **“§ 1861. Racketeering**

2 “(a) OFFENSE.—A person is guilty of an offense if he :

3 “(1) acquires or maintains an interest in, or conducts, an en-
4 terprise through a pattern of racketeering activity or through
5 the collection of an unlawful debt; or

6 “(2) uses or invests proceeds of a pattern of racketeering activ-
7 ity or from the collection of an unlawful debt to acquire an
8 interest in, or to establish or conduct, an enterprise.

9 “(b) DEFINITIONS.—As used in this section :

10 “(1) ‘racketeering activity’ means :

11 “(A) conduct which, in fact, constitutes a felony under
12 one of the following sections: 1321 (Witness Bribery) ; 1322
13 (Corrupting a Witness or an Informant) ; 1323 (Tampering
14 with a Witness or an Informant) ; 1351 (Bribery) ; 1352
15 (Graft) ; 1411 (Liquor and Related Tax Offenses) ; 1421
16 (Smuggling) ; 1422 (Receiving Smuggled Property) ; 1601
17 (Murder) ; 1602 (Manslaughter) ; 1611 (Maiming) ; 1612
18 (Aggravated Battery) ; 1616 (Terrorizing) ; 1621 (Kidnap-
19 ping) ; 1701 (Arson) ; 1711 (Burglary) ; 1721 (Robbery) ;
20 1722 (Extortion) ; 1723 (Criminal Coercion) ; 1724 (Loan-
21 sharking) ; 1731 (Theft) ; 1732 (Receiving Stolen Property) ;
22 1734 (Executing a Scheme to Defraud) ; 1741 (Counterfeit-
23 ing or Forgery) ; 1744 (Trafficking in a Counterfeiting Im-
24 plement) ; 1751 (Commercial Bribery) ; 1752 (Labor Brib-
25 ery) ; 1753 (Sports Bribery) ; 1761 (Securities Violations) ;
26 1764 (Bankruptcy Fraud) ; 1811 (Explosives Violations) ;
27 1812 (Firearms Violations) ; 1821 (Trafficking in Heroin or
28 Morphine) ; 1822 (Trafficking in Drugs) ; 1831 (Engaging
29 in a Gambling Business) ; 1832 (Facilitating or Profiting
30 from Gambling) ; 1841 (Conducting a Prostitution Busi-
31 ness) ; or 1851 (Disseminating Obscene Material) ;

32 “(B) conduct which, in fact, is defined as ‘racketeering
33 activity’ in section 901(a) of the Organized Crime Control
34 Act of 1970 (former 18 U.S.C. 1961(1)) ; or

35 “(c) conduct which, in fact, constitutes a felony under the
36 law of a state relating to murder, kidnapping, gambling,
37 arson, robbery, bribery, extortion, or trafficking in narcotics or
38 other dangerous drugs ;

39 “(2) ‘pattern of racketeering activity’ means two or more sep-
40 arate acts of racketeering activity, committed after October 15,

1 1970, which have the same or similar purposes, results, partici-
2 pants, victims, or methods of commission, or otherwise are inter-
3 related by distinguishing characteristics and are not isolated
4 events;

5 “(3) ‘unlawful debt’ means a debt incurred or contracted
6 through conduct which, in fact, constitutes an offense under section
7 1831 (Engaging in a Gambling Business) or section 1724 (Loan-
8 sharking);

9 “(4) ‘enterprise’ includes any organization and any group or
10 association of individuals although not a legal entity.

11 “(c) DEFENSE.—It is a defense to a prosecution under subsection
12 (a) (2) that the proceeds were used to purchase securities of the enter-
13 prise on the open market without intent to control or participate in
14 the control of the enterprise, or to assist another person to do so, if
15 the securities of the enterprise held by the purchaser, the members of
16 his immediate family, and his or their accomplices in any pattern of
17 racketeering activity or the collection of an unlawful debt after such
18 purchase do not amount in the aggregate to one percent or more of the
19 outstanding securities of any one class, and do not confer, either in
20 law or in fact, the power to elect one or more directors of the enterprise.

21 “(d) GRADING.—An offense described in this section is a Class B
22 felony. In addition to a sentence imposed under part III of this title,
23 the defendant is subject to the forfeiture provisions set forth in section
24 3631.

25 “(e) JURISDICTION.—There is federal jurisdiction over an offense
26 described in this section pursuant to the statement of findings and pur-
27 pose expressed by Congress in the Organized Crime Control Act of
28 1970 (Public Law 91-452).

29 **“§ 1862. Leading a Continuing Criminal Syndicate**

30 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
31 organizes, owns, controls, manages, directs, supervises, finances, or
32 shares in the proceeds of a continuing criminal syndicate.

33 “(b) DEFINITION.—As used in this section, ‘continuing criminal
34 syndicate’ means a group of five or more persons who, individually or
35 collectively, engage on a continuing basis for their mutual benefit in
36 conduct which, in fact, is a felony under a federal or state law relating
37 to trafficking in narcotics or other dangerous drugs, liquor, weapons,
38 stolen or smuggled property, or obscene material; bribery; extortion;
39 loansharking; counterfeiting; forgery; bankruptcy or insurance
40 fraud; smuggling; gambling; or prostitution.

1 “(c) GRADING. An offense described in this section is a Class B
2 felony. Notwithstanding the provisions of part II of this title, the
3 court may not sentence the defendant to probation but shall sentence
4 him to a term of imprisonment of not less than ten years.

5 “(d) JURISDICTION. There is federal jurisdiction over an offense
6 described in this section pursuant to the statement of findings and
7 purpose expressed by Congress in the Organized Crime Control Act
8 of 1970 (Public Law 91-452) and the findings and declaration ex-
9 pressed by Congress in section 101 of the Controlled Substances Act
10 (21 U.S.C. 801).

11 **“§ 1863. Facilitating an Organized Crime Activity by Violence**

12 “(a) OFFENSE.—A person is guilty of an offense if he knowingly
13 commits a crime of violence in furtherance of an organized crime
14 activity.

15 “(b) DEFINITION.—As used in this section, ‘organized crime activ-
16 ity’ means conduct which constitutes a felony under a federal or state
17 law relating to arson, bribery, extortion, gambling, prostitution, or
18 trafficking in liquor or narcotics or other dangerous drugs.

19 “(c) GRADING.—An offense described in this section is a Class D
20 felony.

21 “(d) JURISDICTION.—There is federal jurisdiction over an offense
22 described in this section:

23 “(1) movement of a person across a state or United States
24 boundary occurs in the course of the planning, promotion, man-
25 agement, execution, consummation, or concealment of the offense,
26 or in the course of the distribution of the proceeds of the offense;
27 or

28 “(2) the United States mail or a facility of interstate or foreign
29 commerce is used in the planning, promotion, management, execu-
30 tion, consummation, or concealment of the offense, or in the dis-
31 tribution of the proceeds of the offense.

32 **“§ 1871. Disorderly Conduct**

33 “(a) OFFENSE.—A person is guilty of an offense if, with intent to
34 alarm, harass, or annoy another person or in reckless disregard of the
35 fact that another person is alarmed, harassed, or annoyed, he:

36 “(1) engages in violent, tumultuous, or threatening conduct;

37 “(2) makes or causes unreasonable noise;

38 “(3) uses abusive or obscene language, or engages in obscene
39 conduct, in a public place;

40 “(4) obstructs vehicular or pedestrian traffic, or the use of a
41 public facility;

1 “(5) persistently follows a person in or about a public place
2 or places;

3 “(6) solicits a sexual act, as defined in section 1636(a), in a
4 public place; or

5 “(7) engages in any other conduct which creates a hazardous
6 or physically offensive condition for no legitimate purpose.

7 “(b) GRADING.—An offense described in this section is an infraction.

8 “(c) JURISDICTION.—There is federal jurisdiction over an offense de-
9 scribed in this section if the offense is committed within the special
10 jurisdiction of the United States.

11 **“§ 1881. Violating State or Local Law in an Enclave**

12 “(a) OFFENSE.—A person is guilty of an offense if, in a place with-
13 in the special territorial jurisdiction of the United States other than
14 Indian country, he engages in conduct:

15 “(1) which is an offense under the law then in force in the
16 state or locality in which such place is located; and

17 “(2) which does not otherwise constitute an offense of a simi-
18 lar type under a federal statute or a regulation, rule, or order
19 issued pursuant thereto.

20 “(b) GRADING.—An offense described in this section is of the low-
21 est class for which there is authorized under chapter 23 the same term
22 of imprisonment as that authorized by the state or local law. Not-
23 withstanding the classification provided in this section, the term of
24 imprisonment and the fine which may be imposed may not exceed the
25 maximum authorized by the State or local law.

26 **“PART III.—SENTENCING**

“CHAPTER	Sec.
“20. GENERAL SENTENCING PROVISIONS.....	2001
“21. PROBATION	2101
“22. FINES	2201
“23. IMPRISONMENT	2301
“24. DEATH SENTENCE.....	2401

27 **“Chapter 20.—GENERAL SENTENCING PROVISIONS**

“Sec.

“2001. Authorized Sentences.

“2002. Classification of Offenses outside this Title.

“2003. Presentence Report and Commitment.

“2004. Notice Sanction.

28 **“§ 2001. Authorized Sentences**

29 “(a) IN GENERAL.—Except as otherwise specifically provided, every
30 person found guilty of an offense against the United States shall be
31 sentenced in accordance with the provisions of this chapter.

32 “(b) INDIVIDUALS.—An individual found guilty of an offense against
33 the United States shall be sentenced to:

- 1 “(1) the notice sanction as authorized by section 2004;
- 2 “(2) probation as authorized by chapter 21;
- 3 “(3) a fine as authorized by chapter 22;
- 4 “(4) a term of imprisonment as authorized by chapter 23; or
- 5 “(5) death as authorized by chapter 24.

6 The notice sanction may be imposed in addition to a fine, and either
7 or both may be imposed in addition to probation or a term of imprison-
8 ment.

9 “(c) ORGANIZATIONS.—An organization found guilty of an offense
10 against the United States shall be sentenced to:

- 11 “(1) the notice sanction as authorized by section 2004;
- 12 “(2) probation as authorized by chapter 21; or
- 13 “(3) a fine as authorized by chapter 22.

14 The notice sanction may be imposed in addition to a fine, and either
15 or both may be imposed in addition to probation.

16 “(d) CIVIL PENALTIES.—This chapter does not deprive a court of
17 authority conferred by law to decree a forfeiture of property, suspend
18 or cancel a license, require forfeiture of or disqualification from office
19 or position, or impose any other civil penalty.

20 **“§ 2002. Classification of Offenses outside this Title**

21 “(a) CLASSIFICATIONS.—Except as otherwise provided by this title,
22 an offense described outside this title, which is not specifically classified
23 in the section defining it, is classified for the purpose of sentence as
24 follows:

25 “(1) if the maximum imprisonment authorized for a federal
26 offense described outside this title is:

27 “(A) more than six months, the offense is a Class A mis-
28 demeanor;

29 “(B) six months or less but more than thirty days, the
30 offense is a Class B misdemeanor;

31 “(C) thirty days or less but more than five days, the
32 offense is a Class C misdemeanor; or

33 “(D) five days or less, or if no imprisonment is authorized,
34 the offense is an infraction;

35 “(2) if the maximum imprisonment authorized for a second or
36 subsequent conviction for a federal offense described outside this
37 title is two years or more, the offense is a Class E felony.

38 “(b) EFFECTS OF CLASSIFICATIONS.—The effects of each classification
39 of offenses are set forth in chapters 21 through 23, except that, not-
40 withstanding the classification provided in this section:

1 “(1) the maximum term of imprisonment that may be imposed
2 may not exceed the term authorized by the statute describing the
3 offense;

4 “(2) the maximum fine that may be imposed is the fine author-
5 ized by the statute describing the offense, or by this title, whichever
6 is the greater.

7 **“§ 2003. Presentence Report and Commitment**

8 “(a) **PRESENTENCE REPORT.**—The probation service of the court
9 shall make a presentence investigation and shall report the results of
10 the investigation to the court before the imposition of sentence:

11 “(1) unless the court otherwise directs for reasons stated in the
12 record; or

13 “(2) unless the offense is committed under circumstances requir-
14 ing imposition of a particular sentence and permitting the court
15 no discretion in the imposition of sentence.

16 In a case in which a separate sentencing hearing is held pursuant to
17 the provisions of section 2402, the court may order the presentence
18 investigation delayed pending the return of a special verdict requiring
19 imposition of a sentence other than death.

20 “(b) **PRESENTENCE COMMITMENT FOR STUDY.**—If the court desires
21 more information than is otherwise available to it as a basis for deter-
22 mining the sentence to be imposed on a defendant found guilty of a
23 felony, the court may commit the defendant to the custody of the
24 Bureau of Corrections for a period not exceeding 90 days. The Bureau
25 shall conduct a complete study of the defendant during such period,
26 inquiring into such matters as the defendant’s previous delinquency or
27 criminal experience, his social background, his capabilities, his mental,
28 emotional, and physical health, and the rehabilitative resources or pro-
29 grams which may be available to suit his needs. By the expiration of
30 the period of commitment, or the expiration of such additional time as
31 the court may grant, not exceeding a further period of 90 days, the
32 defendant shall be returned to the court for final sentencing and the
33 court shall be provided with a written report of the results of the study,
34 including whatever recommendations the Bureau believes will be help-
35 ful to a proper resolution of the case. An order committing a defendant
36 under this section constitutes a provisional sentence to imprisonment
37 for the maximum term authorized by section 2301(b). After receiving
38 the report and the recommendation, the court shall proceed finally to
39 sentence the defendant in accordance with the sentencing alternatives
40 available under section 2001.

1 **“§ 2004. Notice Sanction**

2 “When an organization is found guilty of an offense, or when an in-
3 dividual is found guilty of an offense involving fraud or other decep-
4 tive practices, the court, where appropriate, may require the defend-
5 ant to give notice of the conviction to the class of persons or to the
6 sector of the public affected by the conviction or financially interested
7 in the subject matter of the offense, by mail, by advertising in desig-
8 nated areas or through designated media, or by other appropriate
9 means.

10 **“Chapter 21.—PROBATION**

“Sec.

“2101. Sentence of Probation.

“2102. Terms and Incidents of Probation.

“2103. Conditions of Probation ; Revocation.

“2104. Duration of Probation.

11 **“§ 2101. Sentence of Probation**

12 “(a) **IN GENERAL.**—A person who has been found guilty of an of-
13 fense may be sentenced to probation unless the offense is a Class A
14 felony or is an offense for which probation has been expressly pre-
15 cluded.

16 “(b) **CRITERIA.**—Probation may be ordered if the court, having re-
17 gard for the nature and circumstances of the offense and the history
18 and characteristics of the defendant, is of the opinion that :

19 “(1) such disposition will not unduly depreciate the seriousness
20 of the defendant’s crime, undermine respect for law, or fail to con-
21 stitute just punishment for the offense committed ;

22 “(2) such disposition will not fail to afford adequate deterrence to
23 criminal conduct ;

24 “(3) imprisonment of the defendant is not needed for the protection
25 of the public from further crimes of the defendant ; and

26 “(4) the defendant is not in need of such education or vocational
27 training, medical care, or other correctional treatment as can be pro-
28 vided most effectively by his commitment to an institution.

29 **“§ 2102. Terms and Incidents of Probation**

30 “(a) **TERMS.**—The period for which probation may be ordered is :

31 “(1) for a felony, not less than one nor more than five years ;

32 “(2) for a misdemeanor, not more than two years ;

33 “(3) for an infraction, not more than one year.

34 “(b) **EARLY TERMINATION.**—The court may terminate a period of
35 probation previously ordered and discharge the defendant at any time
36 in the case of a misdemeanor or an infraction, or at any time after one
37 year in the case of a felony, if it is satisfied that such action is war-
38 ranted by the conduct of the defendant and the interests of justice.

1 “(c) REVOCATION.—A sentence to probation remains conditional
2 and subject to revocation until expiration or earlier termination.

3 “(d) EFFECT ON FINALITY OF JUDGMENT.—Notwithstanding the fact
4 that a sentence to probation can subsequently be modified or revoked,
5 a judgment which includes such a sentence constitutes a final judgment
6 for all other purposes.

7 **“§ 2103. Conditions of Probation; Revocation**

8 “(a) MANDATORY CONDITION.—The court shall provide, as an ex-
9 plicit condition of every sentence to probation, that the defendant
10 not commit another federal, state, or local offense during the period
11 for which the sentence remains subject to revocation.

12 “(b) DISCRETIONARY CONDITIONS.—The court may require, as fur-
13 ther conditions of a sentence to probation, that the defendant:

14 “(1) work conscientiously at suitable employment or conscien-
15 tiously pursue a course of study or of vocational training that
16 will equip him for suitable employment;

17 “(2) undergo available medical or psychiatric treatment and
18 remain in a specified institution if required for that purpose;

19 “(3) support his dependents and meet other family
20 responsibilities;

21 “(4) make restitution or reparation to the victim of his conduct
22 for the loss caused, in an amount and manner fixed by the court
23 after taking into account the financial resources of the defendant
24 and the nature of the burden that payment in such an amount and
25 manner will impose;

26 “(5) pay a fine authorized by chapter 22;

27 “(6) refrain from possessing a firearm, destructive device, or
28 other dangerous weapon;

29 “(7) refrain from excessive use of alcohol, or any use of a
30 narcotic or of another dangerous or abusable drug without a
31 prescription;

32 “(8) report to a probation officer as directed by the court or the
33 probation officer;

34 “(9) permit the probation officer to visit him at his home or
35 elsewhere;

36 “(10) remain within the jurisdiction of the court, unless
37 granted permission to leave by the court or the probation officer;

38 “(11) answer all inquiries by the probation officer and
39 promptly notify the probation officer of any change in address
40 or employment;

1 “(12) refrain from frequenting specified kinds of places or
2 unnecessarily associating with disreputable persons;

3 “(13) refrain from engaging in a specified occupation, busi-
4 ness, or profession for a period which does not exceed the term
5 of imprisonment which could be imposed under section 2301;

6 “(14) reside in or participate in the program of a community
7 treatment center, as provided in section 3651, for all or part of
8 the period of probation;

9 “(15) reside in a specified place or area, or refrain from resid-
10 ing in a specified place or area; and

11 “(16) satisfy such other conditions as the court may impose.

12 “(c) **MODIFICATION; REVOCATION.**—The court may modify or en-
13 large the conditions of a sentence to probation, or extend its term if
14 less than the maximum authorized term was previously imposed, at
15 any time prior to the expiration or termination of the period for
16 which the sentence remains conditional. If the defendant violates a
17 condition of probation at any time prior to the expiration or termina-
18 tion of the period, the court may continue him on the existing sen-
19 tence, with or without modifying or enlarging the conditions, or, if
20 such continuation, modification, or enlargement is not appropriate
21 in its opinion, may revoke probation and impose any other sentence
22 that was available under section 2001 at the time of initial sentencing.

23 “(d) **TRANSFER TO ANOTHER DISTRICT.**—Jurisdiction over a de-
24 fendant sentenced to probation may be transferred from the court
25 which imposed the sentence to the court for any other district, with
26 the concurrence of both courts. Retransfers of jurisdiction may also
27 occur in the same manner. The court to which jurisdiction has been
28 transferred under this subsection is authorized to exercise all powers
29 over the defendant that are permitted by this chapter.

30 **“§ 2104. Duration of Probation**

31 “(a) **COMMENCEMENT.**—A period of probation commences on the
32 day it is imposed unless otherwise ordered.

33 “(b) **MULTIPLE SENTENCES.**—Multiple periods of probation, whether
34 imposed at the same time or at different times, run concurrently with
35 each other, and run concurrently with any federal, state, or local
36 periods of probation or parole for another offense to which the de-
37 fendant is subject or becomes subject during the period, except that
38 they do not run during any period in which the defendant is im-
39 prisoned.

40 “(c) **DELAYED ADJUDICATION.**—The power of the court to revoke
41 a sentence to probation for violation of a condition of probation ex-

1 tends for the duration of the period provided in section 2102, and for
 2 any further period which is reasonably necessary for the adjudication
 3 of matters arising before its expiration if some affirmative manifesta-
 4 tion of an intent to conduct a revocation hearing is made prior to the
 5 expiration of the period.

6 **“Chapter 22.—FINES**

“Sec.

“2201. Sentence of Fine.

“2202. Imposition of Fine.

“2203. Modification or Remission of Fine.

“2204. Response to Nonpayment.

7 **“§ 2201. Sentence of Fine**

8 “(a) IN GENERAL.—Subject to the provisions of section 2202, a per-
 9 son who has been found guilty of an offense may be sentenced to pay a
 10 fine.

11 “(b) DOLLAR LIMITS.—Except as otherwise provided in subsection
 12 (c) or any other provision of law, the authorized maximum fines are:

13 “(1) in the case of a Class A felony, \$100,000;

14 “(2) in the case of a Class B felony, \$100,000;

15 “(3) in the case of a Class C felony, \$100,000;

16 “(4) in the case of a Class D felony, \$50,000;

17 “(5) in the case of a Class E felony, \$25,000;

18 “(6) in the case of a Class A misdemeanor, \$10,000;

19 “(7) in the case of a Class B misdemeanor, \$5,000;

20 “(8) in the case of a Class C misdemeanor, \$2,500;

21 “(9) in the case of an infraction, \$500.

22 “(c) ALTERNATIVE LIMIT.—In lieu of a fine imposed under subsec-
 23 tion (b) or any other provision of law, a person who has been found
 24 guilty of an offense through which he directly or indirectly derived
 25 pecuniary gain, or by which he caused personal injury or property
 26 damage or other loss, may be sentenced to a fine which does not exceed
 27 twice the gross gain derived or twice the gross loss caused, whichever
 28 is the greater.

29 **“§ 2202. Imposition of Fine**

30 “(a) CRITERIA FOR IMPOSING FINE.—In addition to considering the
 31 nature and circumstances of the offense and the history and character-
 32 istics of the defendant, the court, in determining the amount and
 33 method of payment of a fine, shall take into account the financial re-
 34 sources of the defendant, the nature of the burden that payment of
 35 the fine will impose, and whether imposition of the fine will prevent
 36 the defendant from making restitution or reparation to the victim.

1 “(b) **TIME AND METHOD OF PAYMENT.**—When a defendant is sent-
2 enced to pay a fine, the court may provide for the payment to be made
3 within a specified period of time or in specified installments. If no such
4 provision is made a part of the sentence, the fine is payable forthwith.

5 “(c) **ALTERNATIVE SENTENCE PRECLUDED.**—When a defendant is sen-
6 tenced to pay a fine, the court may not impose at the same time an alter-
7 native sentence to be served in the event that the fine is not paid, but
8 shall respond to nonpayment only after default, as provided in section
9 2204.

10 **“§ 2203. Modification or Remission of Fine**

11 “A defendant who has been sentenced to pay a fine, and who has
12 paid part but not all thereof, may petition the sentencing court for a
13 remission of the unpaid portion or for a modification in the time or
14 method of payment. If the court finds that the circumstances no longer
15 exist that warranted the imposition of the fine in the amount imposed
16 or payment by the time or method specified, or that it would otherwise
17 be unjust to require payment of the fine in the amount imposed or by
18 the time or method specified, the court may extend the time for pay-
19 ment, modify the method of payment, or remit the unpaid portion in
20 whole or in part.

21 **“§ 2204. Response to Nonpayment**

22 “(a) **ORDER TO SHOW CAUSE.**—When an individual sentenced to pay
23 a fine, or under a duty to pay a fine, defaults in the payment of the
24 fine or of any installment, the court upon the motion of the United
25 States Attorney or upon its own motion may require him to show
26 cause why he should not be imprisoned for nonpayment. The court
27 may issue a warrant of arrest or a summons for his appearance.

28 “(b) **IMPRISONMENT.**—Following an order to show cause under sub-
29 section (a), unless the defendant shows that his default is excusable as
30 attributable neither to an intentional refusal to obey the sentence of
31 the court, nor to a failure on his part to make a good faith effort to ob-
32 tain the necessary funds for payment, the court may order the defend-
33 ant imprisoned for nonpayment for a term not to exceed one year if the
34 fine was imposed for a felony, six months if the fine was imposed for a
35 Class A misdemeanor, or 30 days if the fine was imposed for a Class B
36 or C misdemeanor or an infraction. Any term of imprisonment for
37 nonpayment shall run consecutively with a term of imprisonment pre-
38 viously imposed under chapter 23. The court may provide in its order
39 that payment of the fine at any time will entitle the defendant to re-
40 lease from the imprisonment for nonpayment, or, after entering the

1 order, may at any time reduce the term of imprisonment for nonpay-
2 ment for good cause shown, including payment of the fine.

3 “(c) **MODIFICATION OR REMISSION OF FINE.**—If the defendant shows
4 that his default is excusable under the standards set forth in subsection
5 (b), the court may enter an order extending the time for payment and,
6 under the conditions set forth in section 2203, may enter an order
7 modifying the method of payment or remitting the unpaid portion in
8 whole or part. The court in such a case may extend or modify any
9 term of probation previously imposed, as provided in section 2103(c).

10 “(d) **ORGANIZATIONS.**—When a fine is imposed on an organization
11 it is the duty of the person or persons authorized to make disburse-
12 ment of the assets of the organization, and their superiors, to pay the
13 fine from assets of the organization. The failure of such persons and
14 their superiors to do so renders them subject to imprisonment under
15 subsections (a) and (b).

16 “(e) **CIVIL PROCESS.**—Nothing in this section alters or otherwise af-
17 fects the employment for collection of fines of any means authorized
18 for the enforcement of money judgments rendered in favor of the
19 United States, including confinement for civil contempt.

20 “Chapter 23.—IMPRISONMENT

“Sec.

“2301. Sentence of Imprisonment.

“2302. Separate Additional Parole Term Included in Sentence of Imprisonment.

“2303. Concurrent and Consecutive Terms of Imprisonment.

“2304. Calculation of Term of Imprisonment.

21 “§ 2301. Sentence of Imprisonment

22 “(a) **IN GENERAL.**—A person who has been found guilty of an of-
23 fense may be sentenced to a term of imprisonment.

24 “(b) **AUTHORIZED TERMS.**—The authorized maximum terms of im-
25 prisonment are, in addition to the automatic contingent term specified
26 in section 2302:

27 “(1) in the case of a Class A felony, life imprisonment or any
28 term of years;

29 “(2) in the case of a Class B felony, not more than thirty years;

30 “(3) in the case of a Class C felony, not more than fifteen years;

31 “(4) in the case of a Class D felony, not more than seven years;

32 “(5) in the case of a Class E felony, not more than three years;

33 “(6) in the case of a Class A misdemeanor, not more than one
34 year;

35 “(7) in the case of a Class B misdemeanor, not more than six
36 months;

1 “(8) in the case of a Class C misdemeanor, not more than thirty
2 days;

3 “(9) in the case of an infraction, not more than five days.

4 “(c) **DISCRETIONARY AUTHORITY TO SET MINIMUM TERMS.**—Except
5 as otherwise provided, a term of imprisonment in the case of a Class A,
6 B, C, or D felony does not include a minimum term required to be
7 served prior to eligibility for parole unless by affirmative action the
8 court sets a minimum term which does not exceed one-fifth of the term
9 imposed under subsection (b), or, if a term of life imprisonment or any
10 term in excess of thirty years is imposed, which does not exceed ten
11 years. In the case of a Class E felony, a misdemeanor, or an infraction,
12 no minimum term may be set. At any time upon motion of the Bureau
13 of Corrections and upon notice to the United States Attorney, the court
14 may reduce an imposed minimum term to the time served.

15 **“§ 2302. Separate Additional Parole Term Included in Sentence**
16 **of Imprisonment**

17 “A sentence to a term of imprisonment under section 2301 in the
18 case of a felony or a Class A misdemeanor automatically includes, in
19 addition to the term of imprisonment, a separate:

20 “(a) term of parole, the incidents of which are governed by
21 the provisions of chapter 311; and

22 “(b) contingent term of imprisonment of:

23 “(1) one year in the case of a felony; or

24 “(2) ninety days in the case of a Class A misdemeanor.

25 In event of recommitment for violation of a condition of parole,
26 the maximum term of imprisonment remaining is either the maximum
27 term of the original sentence minus the portion of the original sentence
28 served in confinement prior to the last parole, or the contingent term
29 of imprisonment, whichever is the longer.

30 **“§ 2303. Concurrent and Consecutive Terms of Imprisonment**

31 “(a) **IMPOSITION OF MULTIPLE SENTENCES OF IMPRISONMENT.**—
32 When multiple sentences of imprisonment are imposed on a person
33 at the same time, or when a term of imprisonment is imposed on a
34 person who is already subject to an undischarged term of imprison-
35 ment, the sentences run concurrently unless the court orders that the
36 sentences are to run consecutively. The court may order that sentences
37 are to run consecutively if, having regard to the nature and circum-
38 stances of the offense and the history and characteristics of the defend-
39 ant, it is of the opinion that such a term is warranted. Multiple sen-

1 tences ordered to run consecutively shall be treated as a single, aggre-
2 gate term of imprisonment.

3 “(b) **AGGREGATE LIMIT WHERE A FELONY IS INVOLVED.**—The aggre-
4 gate maximum and minimum terms of imprisonment to which a de-
5 fendant may be sentenced may not exceed such terms as are authorized
6 by section 2301 for a felony one grade higher than the most serious
7 felony for which he was found guilty.

8 “(c) **AGGREGATE LIMIT FOR MISDEMEANORS AND INFRACTIONS.**—The
9 aggregate maximum term of imprisonment to which a defendant may
10 be sentenced, when found guilty only of misdemeanors or infractions,
11 may not exceed one year, except that a defendant found guilty of
12 two or more Class A misdemeanors may be sentenced to an aggregate
13 maximum term of imprisonment not exceeding that authorized by
14 section 2301 for a Class E felony.

15 **“§ 2304. Calculation of Term of Imprisonment**

16 “(a) **COMMENCEMENT OF SENTENCE.**—A sentence to a term of im-
17 prisonment commences on the date the defendant is received at the
18 institution at which the sentence is to be served, or on the date he is
19 received in custody awaiting transportation to that institution, which-
20 ever is earlier.

21 “(b) **CREDIT TOWARD SERVICE OF SENTENCE.**—The Bureau of Cor-
22 rections shall give credit toward service of the maximum term of
23 imprisonment and any minimum term of imprisonment for all time
24 spent by the defendant in custody prior to sentence :

25 “(1) as a result of the offense for which the sentence was im-
26 posed ; and

27 “(2) as a result of any other charge for which the defendant
28 was arrested after the commission of the offense for which sen-
29 tence was imposed

30 which has not been credited against another sentence.

31 **“Chapter 24.—DEATH SENTENCE**

“Sec.

“2401. Sentence of Death.

“2402. Procedure to Determine Applicability of Sentence of Death.

32 **“§ 2401. Sentence of Death**

33 “(a) **IN GENERAL.**—Except as otherwise provided in subsection (b),
34 a person who has been found guilty of a Class A felony under section
35 1101 (Treason), 1111 (Sabotage), 1121 (Espionage), or 1601 (Mur-
36 der), shall be sentenced to death if :

37 “(1) the offense is under section 1101 (Treason), 1111 (Sabo-
38 tage), or 1121 (Espionage) and :

1 “(A) the defendant has been convicted of another offense
2 involving treason, sabotage, or espionage, committed before
3 the time of the offense, for which a sentence of life imprison-
4 ment or death was imposable;

5 “(B) the defendant, in the commission of the offense, know-
6 ingly created a grave risk of substantial danger to the national
7 security; or

8 “(C) the defendant, in the commission of the offense,
9 knowingly created a grave risk of death to any person; or
10 “(2) the offense is under section 1601 (Murder) and:

11 “(A) the defendant committed the offense during the com-
12 mission or attempted commission of, or during the immediate
13 flight from the commission or attempted commission of, an
14 offense described in section 1101 (Treason), 1111 (Sabotage),
15 1121 (Espionage), 1314(a)(1) (Escape), 1621 (Kidnap-
16 ping), 1625 (Aircraft Hijacking), or 1701 (Arson);

17 “(B) the defendant has been convicted of another federal
18 or state offense, committed either before or at the time of
19 the offense, for which a sentence of life imprisonment or
20 death was imposable;

21 “(C) the defendant has been convicted of two or more
22 federal or state felonies, committed on different occasions
23 before the time of the offense, involving the infliction of
24 serious bodily injury upon another person;

25 “(D) the defendant, in the commission of the offense, know-
26 ingly created a grave risk of death to another person in addi-
27 tion to the victim of the offense;

28 “(E) the defendant committed the offense in an especially
29 heinous, cruel, or depraved manner;

30 “(F) the defendant procured the commission of the offense
31 by payment, or promise of payment, of anything of pecuniary
32 value;

33 “(G) the defendant committed the offense as consideration
34 for the receipt, or in expectation of the receipt, of anything of
35 pecuniary value; or

36 “(H) the defendant committed the offense against:

37 “(i) the President or a successor to the presidency;

38 “(ii) a chief of state, head of government, or the
39 political equivalent, of a foreign nation; or a foreign

1 dignitary who is in the United States on account of the
2 performance of his official duties; or

3 “(iii) a United States official, a law enforcement offi-
4 cer, an employee of a United States penal or correctional
5 institution, or a federal public servant outside the United
6 States for the purpose of performing diplomatic duties,
7 while performing his official duties or on account of the
8 performance of his official duties or because of his status
9 as a public servant.

10 “(b) IMPOSITION PRECLUDED.—Notwithstanding the existence of one
11 or more of the factors set forth in subsection (a) (1) or (2), the
12 court shall not sentence the defendant to death if, at the time of the
13 offense:

14 “(1) the defendant was under the age of eighteen;

15 “(2) the defendant’s mental capacity was significantly impaired,
16 although not so impaired as to constitute a defense to prosecution;

17 “(3) the defendant was under unusual and substantial duress,
18 although not such duress as would constitute a defense to prose-
19 cution;

20 “(4) the defendant was an accomplice in the offense, which
21 was committed by another person, and his participation was rela-
22 tively minor; or

23 “(5) the defendant could not reasonably have foreseen that his
24 conduct in the course of the murder for which he was convicted
25 would cause, or would create a grave risk of causing, death to any
26 person.

27 **“§ 2402. Procedure To Determine Applicability of Sentence of**
28 **Death**

29 “(a) SEPARATE SENTENCING HEARING.—The court shall conduct a
30 separate sentencing hearing to determine the existence or nonexistence
31 of the factors set forth in section 2401(a) (1) or (2) and section 2401
32 (b), unless the government stipulates that none of the factors set forth
33 in section 2401(a) (1) or (2) exists or that one or more of the factors
34 set forth in section 2401(b) exists. The hearing shall be conducted be-
35 fore the jury which determined the defendant’s guilt; or before a jury
36 impanelled for the purpose of the hearings if the defendant was con-
37 victed upon a plea of guilty, or if the defendant was convicted after
38 a trial before the court sitting without a jury, or if the jury which de-
39 termined the defendant’s guilt has been discharged by the court for

1 good cause; or, upon the motion of the defendant and with the ap-
2 proval of the court and of the government, before the court alone.

3 “(b) EVIDENCE AND ARGUMENT.—At the sentencing hearing the
4 court shall disclose to the defendant or his counsel all material con-
5 tained in the presentence report, if one has been prepared, except such
6 material as the court determines is required to be withheld for the pro-
7 tection of human life or for the protection of the national security.
8 Any material in the presentence report which is withheld from the de-
9 fendant and his counsel shall not be considered by the jury, or if there
10 is no jury, by the court, for the purpose of determining the appli-
11 cability of the death sentence under this chapter. Any information rele-
12 vant to any of the factors set forth in section 2401(a) (1) or (2) may
13 be presented by either the government or the defendant, if admissible
14 under the rules governing the admission of evidence at criminal trials.
15 Any information relevant to any of the factors set forth in section
16 2401(b) may be presented by either the government or the defendant,
17 regardless of its admissibility under the rules governing admission of
18 evidence at criminal trials. The government and the defendant shall
19 be permitted fair opportunity to rebut any information received at
20 the hearing, and shall be given fair opportunity to present argument
21 as to the adequacy of the information to establish the existence of any
22 of the factors set forth in section 2401(a) (1) or (2) and section 2401
23 (b). The burden of establishing the existence of any of the factors set
24 forth in section 2401(a) (1) or (2) is on the government. The burden
25 of establishing the existence of any of the factors set forth in section
26 2401(b) is on the defendant.

27 “(c) SPECIAL VERDICT.—The jury, or if there is no jury, the court,
28 shall return a special verdict setting forth its findings as to the exist-
29 ence or nonexistence of the factors set forth in section 2401(a) (1) or
30 (2) and section 2401(b).

31 “(d) SENTENCE.—If the jury, or if there is no jury, the court, finds
32 by a preponderance of the information that one or more of the factors
33 set forth in section 2401(a) (1) or (2) exists and that none of the
34 factors set forth in section 2401(b) exists, the court shall sentence the
35 defendant to death. If the jury, or if there is no jury, the court, finds
36 that none of the factors set forth in section 2401(a) (1) or (2) exists,
37 or that one or more of the factors set forth in section 2401(b) exists,
38 the court shall not sentence the defendant to death but shall impose
39 any other sentence authorized for a Class A felony under the provi-
40 sions of section 2001.”

TITLE II—CONFORMING AMENDMENTS
AMENDMENTS RELATING TO THE CONGRESS—TITLE 2,
UNITED STATES CODE

DEFINITIONS

SEC. 201. When used in sections 202, 203, and 203A of the Criminal Code Reform Act of 1973 (2 U.S.C. , , and)—

(a) “election” means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(b) “candidate” means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal office, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bring about his nomination for election, or election, to such office;

(c) “Federal office” means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

“(d) “political committee” means any individual, committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$1,000;

(e) “contribution” means—

(1) a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, for

the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(2) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) a transfer of funds between political committees;

(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose; and

(5) notwithstanding the foregoing meanings of "contribution", the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

(f) "expenditure" means—

(1) a purchase, payment, distribution, loan advance, deposit, or gift of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(2) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure; and

(3) a transfer of funds between political committees;

1 (g) "person" and "whoever" mean an individual, partnership,
 2 committee, association, corporation, or any other organization
 3 or group of persons; and

4 (h) "State" means each State of the United States, the District
 5 of Columbia, the Commonwealth of Puerto Rico, and any terri-
 6 tory or possession of the United States.

7 LIMITATION ON CONTRIBUTIONS AND EXPENDITURES

8 SEC. 202. (a) (1) No candidate may make expenditures from his
 9 personal funds, or the personal funds of his immediate family, in
 10 connection with his campaign for nomination for election, or election,
 11 to Federal office in excess of—

12 (A) \$50,000, in the case of a candidate for the office of President
 13 or Vice President;

14 (B) \$35,000, in the case of a candidate for the office of Senator;
 15 or

16 (C) \$25,000, in the case of a candidate for the office of Repre-
 17 sentative, or Delegate or Resident Commissioner to the Congress.

18 (2) For purposes of this subsection, "immediate family" means a
 19 candidate's spouse, and any child, parent, grandparent, brother, or
 20 sister of the candidate, and the spouses of such persons.

21 (b) No candidate or political committee shall knowingly accept any
 22 contribution or authorize any expenditure in violation of the provisions
 23 of this section.

24 (c) Violation of the provisions of this section is a Class A mis-
 25 demeanor.

26 CONTRIBUTIONS OR EXPENDITURES BY NATIONAL BANKS, CORPORATIONS OR
 27 LABOR ORGANIZATIONS

28 SEC. 203. It is unlawful for any national bank, or any corporation
 29 organized by authority of any law of Congress, to make a contribution
 30 or expenditure in connection with any election to any political office,
 31 or in connection with any primary election or political convention or
 32 caucus held to select candidates for any political office, or for any
 33 corporation whatever, or any labor organization to make a contribution
 34 or expenditure in connection with any election at which Presidential
 35 and Vice Presidential electors or a Senator or Representative in, or a
 36 Delegate or Resident Commissioner to Congress are to be voted for, or
 37 in connection with any primary election or political convention or
 38 caucus held to select candidates for any of the foregoing offices, or
 39 for any candidate, political committee, or other person to accept or
 40 receive any contribution prohibited by this section.

1 Every corporation or labor organization which makes any con-
2 tribution or expenditure in violation of this section is guilty of a Class
3 A misdemeanor; and every officer or director of any corporation, or
4 officer of any labor organization, who consents to any contribution or
5 expenditure by the corporation or labor organization, as the case may
6 be, and any person who accepts or receives any contribution, in viola-
7 tion of this section, is guilty of a Class B misdemeanor; and if the
8 violation was willful, is guilty of a Class A misdemeanor.

9 As used in this section, the phrase "contribution or expenditure"
10 shall include any direct or indirect payment, distribution, loan, ad-
11 vance, deposit, or gift of money, or any services, or anything of value
12 (except a loan of money by a national or State bank made in accord-
13 ance with the applicable banking laws and regulations and in the
14 ordinary course of business) to any candidate, campaign committee,
15 or political party or organization, in connection with any election
16 to any of the offices referred to in this section; but shall not include
17 communications by a corporation to its stockholders and their families
18 or by a labor organization to its members and their families; the estab-
19 lishment, administration, and solicitation of contributions to a sep-
20 arate segregated fund to be utilized for political purposes by a corpo-
21 ration or labor organization: *Provided*, That it shall be unlawful
22 for such a fund to make a contribution or expenditure by utilizing
23 money or anything of value secured by physical force, job discrimi-
24 nation, financial reprisals, or the threat of force, job discrimination,
25 or financial reprisal; or by dues, fees, or other monies required as a
26 condition of membership in a labor organization or as a condition of
27 employment, or by monies obtained in any commercial transaction.

28 CONTRIBUTIONS BY GOVERNMENT CONTRACTORS

29 SEC. 203A. Whoever—

30 (a) entering into any contract with the United States or any
31 department or agency thereof either for the rendition of per-
32 sonal services or furnishing any material, supplies, or equipment
33 to the United States or any department or agency thereof or for
34 selling any land or building to the United States or any depart-
35 ment or agency thereof, if payment for the performance of such
36 contract of payment for such material, supplies, equipment, land,
37 or building is to be made in whole or in part from funds appro-
38 priated by the Congress, at any time between the commencement
39 of negotiations for/and the later of (1) the completion of per-
40 formance under, or (2) the termination of negotiations for, such
41 contract or furnishing of material supplies, equipment, land or

buildings, directly or indirectly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(b) knowingly solicits any such contribution from any such person for any such purpose during any such period is guilty of a Class A misdemeanor.

PUBLICATION OR DISTRIBUTION OF POLITICAL STATEMENTS

SEC. 204. Whoever willfully publishes or distributes or causes to be published or distributed, or for the purpose of publishing or distributing the same, knowingly deposits for mailing or delivery or causes to be deposited for mailing or delivery, or, except in cases of employees of the Postal Service in the official discharge of their duties, knowingly transports or causes to be transported in interstate commerce any card, pamphlet, circular, poster, dodger, advertisement, writing, or other statement relating to or concerning any person who has publicly declared his intention to seek the office of President, or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to Congress, in a primary, general, or special election, or convention of a political party, or has caused or permitted his intention to do so to be publicly declared, which does not contain the names of the persons, associations, committees, or corporations responsible for the publication or distribution of the same, and the names of the officers of each such association, committee, or corporation, is guilty of a Class A misdemeanor.

AMENDMENT RELATING TO THE PRESIDENT—TITLE 3, UNITED STATES CODE

SEC. 204A. Chapter 3 of title 3, United States Code, is amended as follows:

(a) A new section 209 is added at the end thereof as follows:

“§ 209. Temporary residence of the President

“(a) It shall be unlawful for any person or group of persons—

“(1) willfully and knowingly to enter or remain in

“(A) any building or grounds designated by the Secretary of the Treasury as temporary residences of the President or as temporary offices of the President and his staff, or

“(B) any posted, cordoned off or otherwise restricted area of a building or grounds where the President is or will be temporarily,

in violation of the regulations governing ingress or egress thereto:

“(2) with intent to impede or disrupt the orderly conduct of Government business or official functions, to engage in disorderly or disruptive conduct in, or within such proximity to, any building or grounds designated in paragraph (1) when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions;

“(3) willfully and knowingly to obstruct or impede ingress or egress to or from any building, grounds, or area designated or enumerated in paragraph (1); or

“(4) willfully and knowingly to engage in any act of physical violence against any person or property in any building, grounds, or area designated or enumerated in paragraph (1).

“(b) Violation of this section, and attempts or conspiracies to commit such violations, are Class B misdemeanors.

“(c) Violation of this section, and attempts or conspiracies to commit such violations, shall be prosecuted by the United States attorney in the Federal district court having jurisdiction of the place where the offense occurred.

“(d) The Secretary of the Treasury is authorized—

“(1) to designate by regulations the buildings and grounds which constitute the temporary residences of the President and the temporary offices of the President and his staff, and

“(2) to prescribe regulations governing ingress or egress to such buildings and grounds and to posted, cordoned off, or otherwise restricted areas where the President is or will be temporarily visiting.

“(e) None of the laws of the United States or of the several States and the District of Columbia shall be superseded by this section.”

(b) The analysis at the beginning of the chapter is amended by adding at the end thereof the following new item:

“209. Temporary residence of the President.”

AMENDMENTS RELATING TO THE FLAG AND SEAL—TITLE 4,

UNITED STATES CODE

SEC. 205(a). Chapter 1 of title 4, United States Code, is amended as follows:

(1) A new section 4 is added after section 3 as follows:

“§ 4. Desecration of the flag of the United States

“(a) Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it is guilty of a Class A misdemeanor;

“(b) The term ‘flag of the United States’ as used in this section,

1 shall include any flag, standard, colors, ensign, or any picture or repre-
 2 sentation of either, or of any part or parts of either, made of any
 3 substance or represented on any substance, or any size evidently pur-
 4 porting to be either of said flag, standard, color, or ensign of the
 5 United States of America, a picture or a representation of either, upon
 6 which shall be shown the colors, the stars and the stripes, in any number
 7 of either thereof, or of any part or parts of either, by which the
 8 average person seeing the same without deliberation may believe the
 9 same to represent the flag, standards, colors, or ensign of the United
 10 States of America.”; and

11 (2) The analysis at the beginning of the chapter is amended by
 12 adding the following new item at the end thereof:

13 “4. Desecration of the flag of the United States.”

14 (b) Chapter 2 of title 4, United States Code, is amended as follows:

15 (1) A new section 43 is added after section 42 as follows:

16 “§ 43. Use of likenesses of the great seal of the United States

17 “(a) Whoever knowingly displays any printed or other likeness of
 18 the great seal of the United States, or of the seals of the President or
 19 the Vice President of the United States, or any facsimile thereof, in,
 20 or in connection with, any advertisement, poster, circular, book,
 21 pamphlet, or other publication, public meeting, play, motion picture,
 22 telecast, or other production, or on any building, monument, or sta-
 23 tionery, for the purpose of conveying, or in a manner reasonably cal-
 24 culated to convey, a false impression of sponsorship or approval by
 25 the Government of the United States or by any department, agency, or
 26 instrumentality thereof, is guilty of a Class B misdemeanor.

27 “(b) A violation of subsection (a) of this section may be enjoined
 28 at the suit of the Attorney General upon complaint by any authorized
 29 representative of any department or agency of the United States.”;
 30 and

31 (2) The analysis at the beginning of the chapter is amended by
 32 adding the following new item at the end thereof:

33 “43. Use of likenesses of the great seal of the United States.”

34 (c) (1) Title 4, United States Code, is amended by adding at the
 35 end thereof the following new chapter:

36 “Chapter 6.—OTHER INSIGNIA OF THE UNITED STATES

“Sec.

“171. Use of likenesses of the seals of the President and Vice President.

“172. Official badges, identification cards, other insignia.

“173. Misuse of names by collecting agencies or private detective agencies to in-
 dicate Federal agency.

1 **“§ 171. Use likenesses of the seals of the President and Vice**
2 **President**

3 “(a) Whoever, except as authorized under regulations promulgated
4 by the President and published in the Federal Register, knowingly
5 manufactures, reproduces, sells, or purchases for resale, either separ-
6 ately or appended to any article manufactured or sold, any likeness of
7 the seals of the President or Vice President, or any substantial part
8 thereof, except for manufacture or sale of the article for the official
9 use of the Government of the United States, is guilty of a Class B mis-
10 demeanor.

11 “(b) A violation of subsection (a) of this section may be enjoined
12 at the suit of the Attorney General upon complaint by any authorized
13 representative of any department or agency of the United States.

14 **“§ 172. Official badges, identification cards, other insignia**

15 “Whoever manufactures, sells, or possesses any badge, identification
16 card, or other insignia, of the design prescribed by the head of any
17 department or agency of the United States for use by any officer or
18 employee thereof, or any colorable imitation thereof, or photographs,
19 prints, or in any other manner makes or executes any engraving, photo-
20 graph, print, or impression in the likeness of any such badge, identifica-
21 tion card, or other insignia, or any colorable imitation thereof, except
22 as authorized under regulations made pursuant to law, is guilty of a
23 Class B misdemeanor.

24 **“§ 173. Misuse of names by collecting agencies or private detective**
25 **agencies to indicate Federal agency**

26 “Whoever, being engaged in collecting his own debts or obligations,
27 or being engaged in the business of collecting or aiding in the collection
28 of private debts or obligations of another, or being engaged in furnish-
29 ing private police, investigation, or other private detective services,
30 uses as part of the firm name of such business, or employs in any com-
31 munication, correspondence, notice, advertisement, or circular the
32 words ‘national’, ‘Federal’, or ‘United States’, the initials ‘U.S.’, or
33 any emblem, insignia, or name, for the purpose of conveying the false
34 impression that such person or business is a department, agency, bu-
35 reau, or instrumentality of the United States, is guilty of a Class A
36 misdemeanor.”; and

37 (2) The analysis at the beginning of title 4, United States Code,
38 is amended by adding after the item relating to chapter 5 the follow-
39 ing new item :

“6. Other Insignia of the United States. . . . 171”

1 AMENDMENTS RELATING TO GOVERNMENT ORGANIZATION AND

2 EMPLOYEES—TITLE 5, UNITED STATES CODE

3 SEC. 206. (a) Chapter 29 of title 5, United States Code is amended as
4 follows:

5 (1) A new section 2955 is added at the end thereof as follows:

6 **“§ 2955. Officer failing to make returns or reports**

7 “Every officer who neglects or refuses to make any return, or report
8 which he is required to make at stated times by any Act of Congress
9 or regulation of the Department of the Treasury, other than his ac-
10 counts, within the time prescribed by such Act or regulation, shall be
11 fined not more than \$1,000.”; and

12 (2) The analysis at the beginning of the chapter is amended by
13 adding at the end thereof the following new item:

14 **“2955. Officer failing to make returns or reports.”**

15 (b) Chapter 31 of title 5, United States Code, is amended as follows:

16 (1) Section 3102 is amended by deleting the words “section 209 of
17 title 18” in subsection (b) and inserting in lieu thereof the words “sec-
18 tion 9108 of this title”;

19 (2) The last sentence of section 3103 is amended to read: “An in-
20 dividual who violates this section is guilty of a Class A misdemeanor
21 and shall be removed from the service.”;

22 (3) A new section 3111 is added at the end of the chapter as
23 follows:

24 **“§ 3111. Acceptance or solicitation to obtain appointive public**
25 **office**

26 “Whoever solicits or receives any thing of value in consideration of
27 aiding a person to obtain employment under the United States either
28 by referring his name to an executive department or agency of the
29 United States or by requiring the payment of a fee because such per-
30 son has secured such employment is guilty of a Class A misdemeanor.
31 This section shall not apply to such services rendered by an employ-
32 ment agency pursuant to the written request of an executive depart-
33 ment or agency of the United States.”; and

34 (4) The analysis at the beginning of the chapter is amended by
35 adding at the end thereof the following new item:

“3111. Acceptance or solicitation to obtain appointive office.”

36 (c) Chapter 33 of title 5, United States Code, is amended as follows:

37 (1) Section 3343 is amended by deleting the words “section 209

1 of title 18" in subsection (e) and inserting in lieu thereof the words
2 "section 9108 of this title"; and

3 (2) Section 3374(c) (2) is amended to read as follows:

4 "(2) is an employee of the agency for the purpose of chapter 73
5 and sections 9102, 9104, 9106, 9107, 9108, 9115, and 9301 of this title,
6 section 638a of title 31, and the Federal Tort Claims Act and any
7 other Federal tort liability statute; and is a federal public servant
8 for the purpose of sections 1352, 1353, 1354, 1356, 1524, 1525, and
9 1731 of title 18; and".

10 (d) Section 4111 of chapter 41 of title 5, United States Code, is
11 amended by deleting the words "section 209 of title 18" and inserting
12 in lieu thereof the words "section 9108 of this title".

13 (e) Section 7311 of chapter 73 of title 5, United States Code is
14 amended

15 (1) by inserting the designation "(a)" before the words "An
16 individual" at the beginning of the section; and

17 (2) by adding a new subsection (b) at the end thereof as
18 follows:

19 "(b) An individual who violates this section is guilty of a
20 Class A misdemeanor."

21 (f) Subchapter I of chapter 81 of title 5, United States Code, is
22 amended as follows:

23 (1) The following new sections are added at the end thereof:

24 **"§ 8151. False or withheld report concerning Federal employees'**
25 **compensation**

26 "Whoever, being an officer or employee of the United States charged
27 with the responsibility for making the reports of the immediate
28 superior specified by section 8120 or title 5, willfully fails, neglects, or
29 refuses to make any of the reports, or induces, compels, or directs an
30 injured employee to forego filing of any claim for compensation or
31 other benefits provided under subchapter I of chapter 81 of title 5
32 or any extension or application thereof, or willfully retains any notice,
33 report, claim, or paper which is required to be filed under that sub-
34 chapter or any extension or application thereof, or regulations pre-
35 scribed thereunder, is guilty of a Class A misdemeanor.

36 **"§ 8152. Solicitation of employment and receipt of unapproved**
37 **fees concerning Federal employees' compensation**

38 "Whoever solicits employment for himself or another in respect

1 to a case, claim, or award for compensation under, or to be brought
2 under, subchapter I of chapter 81 of title 5; or

3 "Whoever receives a fee, other consideration, or gratuity on account
4 of legal or other services furnished in respect to a case, claim, or award
5 for compensation under subchapter I of chapter 81 of title 5, unless
6 the fee, consideration, or gratuity is approved by the Secretary of
7 Labor—

8 "Is guilty of a Class A misdemeanor."; and

9 (2) The analysis at the beginning of the chapter is amended by
10 adding after the item relating to section 8150 the following new items:

"8151. False or withheld report concerning Federal employees' compensation.

"8152. Solicitation of employment and receipt of unapproved fees concerning
Federal employees' compensation."

11 (g) Subsection (b) (1) of section 8312 of chapter 83 of title 5,
12 United States Code is amended to read as follows:

13 "(1) An offense within the purview of—

14 "(A) section 1121 (espionage), 1122 (disclosing national de-
15 fense information), 1123 (mishandling national defense informa-
16 tion), 1124 (disclosing classified information), 1125 (unlawfully
17 obtaining classified information), or 1127 (failing to register as
18 a person trained in a foreign espionage system) of title 18;

19 "(B) section 1111 (sabotage), 1112 (impairing military effec-
20 tiveness), or 1302 (obstructing a government function by physical
21 interference) of title 18;

22 "(C) section 1101 (treason), 1102 (armed rebellion or insurrec-
23 tion), 1103 (inciting overthrow or destruction of the government),
24 1114 (impairing military effectiveness by false statement), 1117
25 (inciting or aiding mutiny, insubordination, or desertion), or 1203
26 (entering or recruiting for a foreign armed force) of title 18;

27 "(D) section 1002 (criminal conspiracy) of title 18, if the con-
28 spiracy relates to an offense listed in subparagraph (A), (B) or
29 (C) of this subsection;

30 "(E) section 16 (a) or (b) of the Atomic Energy Act of 1946
31 (60 Stat. 773), as in effect before August 30, 1954, insofar as the
32 offense is committed with intent to injure the United States or
33 with intent to secure an advantage to a foreign nation; or

34 "(F) an earlier statute on which a statute named by subpara-
35 graph (A), (B), (C), or (D) of this paragraph (1) is based."

36 (h) (1) A new Subpart H is added at the end of Part III of title 5,
37 United States Code, as follows:

“Subpart H.—Standards of Conduct
“Chapter 91.—CONFLICTS OF INTEREST

“Sec.

“9101. Definitions.

“9102. Compensation to Members of Congress, officers, and others in matters affecting the Government.

“9103. Practice in Court of Claims by Members of Congress.

“9104. Activities of officers and employees in claims against and other matters affecting the Government.

“9105. Exemption of retired officers of the uniformed services.

“9106. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.

“9107. Acts affecting a personal financial interest.

“9108. Salary of Government officials and employees payable only by the United States.

“9109. Officers and employees acting as agents or foreign principals.

“9110. Contracts by Members of Congress.

“9111. Officer or employee contracting with Member of Congress.

“9112. Exemptions with respect to certain contracts.

“9113. Convict labor contracts.

“9114. Indian contracts for goods and supplies.

“9115. Lobbying with appropriated moneys.

“§ 9101. Definitions

“(a) For the purpose of sections 9102, 9104, 9106, 9107 and 9108 of this title the term ‘special Government employee’ means an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, or a part-time United States magistrate. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member’s home district or State shall be classified as a special Government employee. Notwithstanding sections 502, 2105 and 5534 of this title, a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 9102 and sections 9104 through 9108 of this title and section 3621 of title 18. A Reserve officer of the Armed Forces or an

1 officer of the National Guard of the United States who is serving
2 involuntarily shall be classified as a special Government employee.
3 The terms 'officer or employee' and 'special Government employee'
4 as used in sections 9102, 9104, and 9106 through 9108 of this title
5 and section 3621 of title 18, shall not include enlisted members of the
6 Armed Forces.

7 "(b) For the purposes of sections 9104 and 9106 of this title, the
8 term 'official responsibility' means the direct administrative or op-
9 erating authority, whether intermediate or final, and either exer-
10 cisable alone or with others, and either personally or through subordi-
11 nates, to approve, disapprove, or otherwise direct Government action.

12 **"§ 9102. Compensation to Members of Congress, officers, and**
13 **others in matters affecting the Government**

14 "(a) Whoever, otherwise than as provided by law for the proper
15 discharge of official duties, directly or indirectly receives or agrees
16 to receive, or asks, demands, solicits, or seeks, any compensation for any
17 services rendered or to be rendered either by himself or another—

18 "(1) at a time when he is a Member of Congress, Member of
19 Congress Elect, Delegate from the District of Columbia, Dele-
20 gate Elect from the District of Columbia, Resident Commissioner,
21 or Resident Commissioner Elect; or

22 "(2) at a time when he is an officer or employee of the United
23 States in the executive, legislative, or judicial branch of the Gov-
24 ernment, or in any agency of the United States, including the
25 District of Columbia,

26 in relation to any proceeding, application, request for a ruling or
27 other determination, contract, claim, controversy, charge, accusation,
28 arrest, or other particular matter in which the United States is a party
29 or has a direct and substantial interest, before any department, agency,
30 court-martial, officer, or any civil, military, or naval commission, or

31 "(b) Whoever, knowingly, otherwise than as provided by law for
32 the proper discharge of official duties, directly or indirectly gives,
33 promises, or offers any compensation for any such services rendered
34 or to be rendered at a time when the person to whom the compensa-
35 tion is given, promised, or offered, is or was such a Member, Delegate,
36 Commissioner, officer, or employee—

37 "Is guilty of a Class A misdemeanor and shall be incapable of
38 holding any office of honor, trust, or profit under the United States.

39 "(c) A special Government employee shall be subject to subsection

1 (a) only in relation to a particular matter involving a specific party
2 or parties (1) in which he has at any time participated personally
3 and substantially as a Government employee or as a special Govern-
4 ment employee through decision, approval, disapproval, recommenda-
5 tion, the rendering of advice, investigation or otherwise, or (2) which
6 is pending in the department or agency of the Government in which
7 he is serving: *Provided*, That clause (2) shall not apply in the case
8 of a special Government employee who has served in such department
9 or agency no more than sixty days during the immediately preceding
10 period of three hundred and sixty-five consecutive days.

11 **“§ 9103. Practice in Court of Claims by Members of Congress**

12 “Whoever, being a Member of Congress, Member of Congress Elect,
13 Delegate from the District of Columbia, Delegate Elect from the Dis-
14 trict of Columbia, Resident Commissioner, or Resident Commissioner
15 Elect, practices in the Court of Claims, is guilty of a Class A mis-
16 demeanor, and shall be incapable of holding any office of honor, trust,
17 or profit under the United States.

18 **“§ 9104. Activities of officers and employees in claims against**
19 **and other matters affecting the Government**

20 “Whoever, being an officer or employee of the United States in the
21 executive, legislative, or judicial branch of the Government or in any
22 agency of the United States, including the District of Columbia, other-
23 wise than in the proper discharge of his official duties—

24 “(1) acts as agent or attorney for prosecuting any claims against
25 the United States, or receives any gratuity, or any share of or
26 interest in any such claim in consideration of assistance in the
27 prosecution of such claim, or

28 “(2) acts as agent or attorney for anyone before any depart-
29 ment, agency, court, court-martial, officer, or any civil, military, or
30 naval commission in connection with any proceeding, application,
31 request for a ruling or other determination, contract, claim, con-
32 troversy, charge, accusation, arrest, or other particular matter
33 in which the United States is a party or has a direct and substan-
34 tial interest—

35 “Is guilty of a Class A misdemeanor.

36 “A special Government employee shall be subject to the preceding
37 paragraphs only in relation to a particular matter involving a specific
38 party or parties (1) in which he has at any time participated per-
39 sonally and substantially as a Government employee or as a special
40 Government employee through decision, approval, disapproval, rec-

1 commendation, the rendering of advice, investigation or otherwise, or
2 (2) which is pending in the department or agency of the Government
3 in which he is serving: *Provided*, That clause (2) shall not apply in
4 the case of a special Government employee who has served in such
5 department or agency no more than sixty days during the immediately
6 preceding period of three hundred and sixty-five consecutive days.

7 “Nothing herein or in section 9102 of this title, or in section 1353 or
8 1354 of title 18, United States Code, prevents an officer or employee,
9 including a special Government employee, from acting, with or with-
10 out compensation, as agent or attorney for his parents, spouse, child,
11 or any person for whom, or for any estate for which, he is serving as
12 guardian, executor, administrator, trustee, or other personal fiduciary
13 except in those matters in which he has participated personally and
14 substantially as a Government employee, through decision, approval,
15 disapproval, recommendation, the rendering of advice, investigation,
16 or otherwise, or which are the subject of his official responsibility,
17 provided that the Government official responsible for appointment to
18 his position approves.

19 “Nothing herein or in section 9102 of this title, or in section 1353
20 or 1354 of title 18, United States Code, prevents a special Government
21 employee from acting as agent or attorney for another person in the
22 performance of work under a grant by, or a contract with or for the
23 benefit of, the United States provided that the head of the department
24 or agency concerned with the grant or contract shall certify in writing
25 that the national interest so requires.

26 “Such certification shall be published in the Federal Register.

27 “Nothing herein prevents an officer or employee from giving testi-
28 mony under oath or from making statements required to be made
29 under penalty for perjury or contempt.

30 **“§ 9105. Exemption of retired officers of the uniformed services**

31 “Sections 9102 and 9104 of this title shall not apply to a retired
32 officer of the uniformed services of the United States while not on
33 active duty and not otherwise an officer or employee of the United
34 States, or to any person specially excepted by an Act of Congress.

35 **“§ 9106. Disqualification of former officers and employees in**
36 **matters connected with former duties or official respon-**
37 **sibilities; disqualification of partners**

38 “(a) Whoever, having been an officer or employee of the executive
39 branch of the United States Government, or any independent agency
40 of the United States, or of the District of Columbia, including a spe-

1 cial Government employee, after his employment has ceased, know-
2 ingly acts as agent or attorney for anyone other than the United States
3 in connection with any judicial or other proceeding, application, re-
4 quest for a ruling or other determination, contract, claim, controversy,
5 charge, accusation, arrest, or other particular matter involving a
6 specific party or parties in which the United States is a party or has a
7 direct and substantial interest and in which he participated personally
8 and substantially as an officer or employee, through decision, approval,
9 disapproval, recommendation, the rendering of advice, investigation,
10 or otherwise, while so employed, or

11 “(b) Whoever, having been so employed, within one year after his
12 employment has ceased, appears personally before any court or de-
13 partment or agency of the Government as agent, or attorney for, any-
14 one other than the United States in connection with any proceeding,
15 application, request for a ruling or other determination, contract,
16 claim, controversy, charge, accusation, arrest, or other particular mat-
17 ter involving a specific party or parties in which the United States is
18 a party or directly and substantially interested, and which was under
19 his official responsibility as an officer or employee of the Government
20 at any time within a period of one year prior to the termination of
21 such responsibility—

22 “Is guilty of a Class A misdemeanor: *Provided*, That nothing in
23 subsection (a) or (b) prevents a former officer or employee, including
24 a former special Government employee, with outstanding scientific or
25 technological qualifications from acting as attorney or agent or ap-
26 pearing personally in connection with a particular matter in a scien-
27 tific or technological field if the head of the department or agency
28 concerned with the matter makes a certification in writing, published
29 in the Federal Register, that the national interest would be served by
30 such action or appearance by the former officer or employee.

31 “(c) Whoever, being a partner of an officer or employee of the execu-
32 tive branch of the United States Government, of any independent
33 agency of the United States, or of the District of Columbia, including
34 a special Government employee, acts as agent or attorney for anyone
35 other than the United States, in connection with any judicial or
36 other proceeding, application, request for a ruling or other deter-
37 mination, contract, claim, controversy, charge, accusation, arrest, or
38 other particular matter in which the United States is a party or has
39 a direct and substantial interest and in which such officer or employee
40 of the Government or special Government employee participates or

1 has participated personally and substantially as a Government em-
2 ployee through decision, approval, disapproval, recommendation, the
3 rendering of advice, investigation or otherwise, or which is the subject
4 of his official responsibility—

5 “Is guilty of a Class A misdemeanor.

6 “A partner of a present or former officer or employee of the executive
7 branch of the United States Government, of any independent agency
8 of the United States, or of the District of Columbia or of a present or
9 former special Government employee shall as such be subject to the
10 provisions of sections 9102, 9104, and 9106 of this title only as expressly
11 provided in subsection (c) of this section.

12 **“§ 9107. Acts affecting a personal financial interest**

13 “(a) Except as permitted by subsection (b) hereof, whoever, being
14 an officer or employee of the executive branch of the United States
15 Government, of any independent agency of the United States, or of the
16 District of Columbia, including a special Government employee, par-
17 ticipates personally and substantially as a Government officer or em-
18 ployee, through decision, approval, disapproval, recommendation, the
19 rendering of advice, investigation, or otherwise, in a judicial or other
20 proceeding, application, request for a ruling or other determination,
21 contract, claim, controversy, charge, accusation, arrest, or other par-
22 ticular matter in which, to his knowledge, he, his spouse, minor child,
23 partner, organization in which he is serving as officer, director, trustee,
24 partner or employee, or any person or organization with whom he is
25 negotiating or has any arrangement concerning prospective employ-
26 ment, has a financial interest—

27 “Is guilty of a Class A misdemeanor.

28 “(b) Subsection (a) hereof shall not apply (1) if the officer or em-
29 ployee first advises the Government official responsible for appoint-
30 ment to his position of the nature and circumstances of the judicial
31 or other proceeding, application, request for a ruling or other deter-
32 mination, contract, claim, controversy, charge, accusation, arrest, or
33 other particular matter and makes full disclosure of the financial
34 interest and receives in advance a written determination made by such
35 official that the interest is not so substantial as to be deemed likely to
36 affect the integrity of the services which the Government may expect
37 from such officer or employee, or (2) if, by general rule or regulation
38 published in the Federal Register, the financial interest has been
39 exempted from the requirements of clause (1) hereof as being too

1 remote or too inconsequential to affect the integrity of Government
2 officers' or employees' services.

3 **“§ 9108. Salary of Government officials and employees payable**
4 **only by United States**

5 “(a) Whoever receives any salary, or any contribution to or supple-
6 mentation of salary, as compensation for his services as an officer or
7 employee of the executive branch of the United States Government,
8 of any independent agency of the United States, or of the District of
9 Columbia, from any source other than the Government of the United
10 States, except as may be contributed out of the treasury of any State,
11 county, or municipality; or

12 “Whoever, whether an individual, partnership, association, corpo-
13 ration, or other organization pays, or makes any contribution to, or
14 in any way supplements the salary of, any such officer or employee
15 under circumstances which would make its receipt a violation of this
16 subsection—

17 “Is guilty of a Class A misdemeanor.

18 “(b) Nothing herein prevents an officer or employee of the execu-
19 tive branch of the United States Government, or of any independent
20 agency of the United States, or of the District of Columbia, from
21 continuing to participate in a bona fide pension, retirement, group
22 life, health or accident insurance, profit-sharing, stock bonus, or other
23 employee welfare or benefit plan maintained by a former employer.

24 “(c) This section does not apply to a special Government employee
25 or to an officer or employee of the Government serving without com-
26 pensation, whether or not he is a special Government employee, or
27 to any person paying, contributing to, or supplementing his salary as
28 such.

29 “(d) This section does not prohibit payment or acceptance of con-
30 tributions, awards, or other expenses under the terms of chapter 41
31 of this title.

32 **“§ 9109. Officers and employees acting as agents of foreign**
33 **principals**

34 “Whoever, being an officer or employee of the United States in the
35 executive, legislative, or judicial branch of the Government or in any
36 agency of the United States, including the District of Columbia, is
37 or acts as an agent of a foreign principal required to register under
38 the Foreign Agents Registration Act of 1938, as amended, shall be
39 punished as provided in section 1128 of title 18.

40 “Nothing in this section shall apply to the employment of any agent

1 of a foreign principal as a special Government employee in any case
2 in which the head of the employing agency certifies that such employ-
3 ment is required in the national interest. A copy of any certifica-
4 tion under this paragraph shall be forwarded by the head of such
5 agency to the Attorney General who shall cause the same to be filed
6 with the registration statement and other documents filed by such
7 agent, and made available for public inspection in accordance with
8 section 6 of the Foreign Agents Registration Act of 1938, as amended.

9 **“§ 9110. Contracts by Members of Congress**

10 “Whoever, being a Member of or Delegate to Congress, or a Resident
11 Commissioner, either before or after he has qualified, directly or in-
12 directly, himself, or by any other person in trust for him, or for his
13 use or benefit, or on his account, undertakes, executes, holds, or enjoys,
14 in whole or in part, any contract or agreement, made or entered into in
15 behalf of the United States or any agency thereof, by any officer or per-
16 son authorized to make contracts on its behalf, shall be fined not more
17 than \$3,000.

18 “All contracts or agreements made in violation of this section shall
19 be void; and whenever any sum of money is advanced by the United
20 States or any agency thereof, in consideration of any such contract or
21 agreement, it shall forthwith be repaid; and in case of failure or
22 refusal to repay the same when demanded by the proper officer of the
23 department or agency under whose authority such contract or agree-
24 ment shall have been made or entered into, suit shall at once be brought
25 against the person so failing or refusing and his sureties for the recov-
26 ery of the money so advanced.

27 **“§ 9111. Officer or employee contracting with Member of Congress**

28 “Whoever, being an officer or employee of the United States, on
29 behalf of the United States or any agency thereof, directly or indi-
30 rectly makes or enters into any contract, bargain, or agreement, with
31 any Member of or Delegate to Congress, or any Resident Commis-
32 sioner, either before or after he has qualified, shall be fined not more
33 than \$3,000.

34 **“§ 9112. Exemptions with respect to certain contracts**

35 “Sections 9110 and 9111 of this title shall not extend to any con-
36 tract or agreement made or entered into, or accepted by any incor-
37 porated company for the general benefit of such corporation; nor to
38 the purchase or sale of bills of exchange or other property where the
39 same are ready for delivery and payment therefor is made at the

1 time of making or entering into the contract or agreement. Nor
2 shall the provisions of such sections apply to advances, loans, dis-
3 counts, purchase or repurchase agreements, extensions, or renewals
4 thereof, or acceptances, releases or substitutions of security therefor
5 or other contracts or agreements made or entered into under the Re-
6 construction Finance Corporation Act, the Agricultural Adjustment
7 Act, the Federal Farm Loan Act, the Emergency Farm Mortgage
8 Act of 1933, the Farm Credit Act of 1933, or the Home Owners Loan
9 Act of 1933, the Farmers' Home Administration Act of 1946, the Bank-
10 head-Jones Farm Tenant Act, or to crop insurance agreements or
11 contracts or agreements of a kind which the Secretary of Agriculture
12 may enter into with farmers.

13 "Any exemption permitted by this section shall be made as a matter
14 of public record.

15 **"§ 9113. Convict labor contracts**

16 "Whoever, being an officer, employee, or agent of the United States
17 or any department or agency thereof, contracts with any person or
18 corporation, or permits any warden, agent, or official of any penal
19 or correctional institution, to hire out the labor of any prisoners con-
20 fined for violation of any laws of the United States, is guilty of a Class
21 A misdemeanor.

22 **"§ 9114. Indian contracts for goods and supplies**

23 "Whoever, being an officer, employee, or agent of the United States
24 or any department or agency thereof, has any interest, direct or in-
25 direct, in any contract made or under negotiation, with the Govern-
26 ment or with the Indians, for the purchase or transportation or
27 delivery of goods or supplies for the Indians, or for the removal of
28 the Indians, or colludes with any person attempting to obtain such
29 contract, is guilty of a Class B misdemeanor, and shall be removed
30 from office.

31 **"§ 9115. Lobbying with appropriated moneys**

32 "No part of the money appropriated by any enactment of Congress
33 shall, in the absence of express authorization by Congress, be used
34 directly or indirectly to pay for any personal service, advertisement,
35 telegram, telephone, letter printed or written matter, or other device,
36 intended or designed to influence in any manner a Member of Con-
37 gress, to favor or oppose, by vote or otherwise, any legislation or
38 appropriation by Congress, whether before or after the introduction
39 of any bill or resolution proposing such legislation or appropriation;
40 but this shall not prevent officers or employees of the United States

1 or of its departments or agencies from communicating to Members of
2 Congress on the request of any Member or to Congress, through the
3 proper official channels, requests for legislation or appropriations
4 which they deem necessary for the efficient conduct of the public
5 business.

6 "Whoever, being an officer or employee of the United States or of
7 any department or agency thereof, violates or attempts to violate
8 this section, is guilty of a Class A misdemeanor, and after notice and
9 hearing by the superior officer vested with the power of removing
10 him, shall be removed from office or employment.

11 **"Chapter 93.—DISCLOSURE OF INFORMATION**

"Sec.

"9301. Disclosure of confidential information generally.

"9302. Disclosure of crop information and speculation thereon.

12 **"§ 9301. Disclosure of confidential information generally**

13 "Whoever, being an officer or employee of the United States or of
14 any department or agency thereof, publishes, divulges, discloses, or
15 makes known in any manner or to any extent not authorized by law
16 any information coming to him in the course of his employment or
17 official duties or by reason of any examination or investigation made
18 by, or return, report or record made to or filed with, such department
19 or agency or officer or employee thereof, which information concerns
20 or relates to the trade secrets, processes, operations, style of work, or
21 apparatus, or to the identity, confidential statistical data, amount or
22 source of any income, profits, losses, or expenditures of any person,
23 firm, partnership, corporation, or association; or permits any income
24 return or copy thereof or any book containing any abstract or par-
25 ticulars thereof to be seen or examined by any person except as pro-
26 vided by law; is guilty of a Class A misdemeanor; and shall be removed
27 from office or employment.

28 **"§ 9302. Disclosure of crop information and speculation thereon**

29 "Whoever, being an officer, employee or person acting for or on
30 behalf of the United States or any department or agency thereof,
31 and having by virtue of his office, employment or position, become
32 possessed of information which might influence or affect the market
33 value of any product of the soil grown within the United States, which
34 information is by law or by the rules of such department or agency
35 required to be withheld from publication until a fixed time, willfully
36 imparts, directly or indirectly, such information, or any part thereof,
37 to any person not entitled under the law or the rules of the depart-
38 ment or agency to receive the same, is guilty of a Class A misdeameanor.

1 "No person shall be deemed guilty of a violation of any such rules,
2 unless prior to such alleged violation he had actual knowledge
3 thereof."; and

4 (2) The analysis at the beginning of Part III of title 5, United
5 States Code, is amended by adding at the end thereof the following:

6 **"Subpart H.—Standards of Conduct**

"91. Conflicts of Interest..... 9101
"93. Disclosure of Information..... 9301".

7 **AMENDMENTS RELATING TO AGRICULTURE—**

8 **TITLE 7, UNITED STATES CODE**

9 **4-H CLUB EMBLEM FRAUDULENTLY USED**

10 **SEC. 207.** Whoever, with intent to defraud, wears or displays the
11 sign or emblem of the 4-H clubs, consisting of a green four-leaf clover
12 with stem, and the letter H in white or gold on each leaflet, or any
13 insignia in colorable imitation thereof, for the purpose of inducing
14 the belief that he is a member of, associated with, or an agent or
15 representative for the 4-H clubs; or

16 Whoever, whether an individual, partnership, corporation or as-
17 sociation, other than the 4-H clubs and those duly authorized by
18 them, the representatives of the United States Department of Agri-
19 culture, the land grant colleges, and persons authorized by the Secre-
20 tary of Agriculture, uses, within the United States, such emblem
21 or any sign, insignia, or symbol in colorable imitation thereof, or the
22 words "4-H Club" or "4-H Clubs" or any combination of these or
23 other words or characters in colorable imitation thereof—

24 Is guilty of a Class B misdemeanor.

25 This section shall not make unlawful the use of any such emblem,
26 sign, insignia or words, which was lawful on June 25, 1948.

27 **4-H CLUB MEMBERS OR AGENTS**

28 **SEC. 208.** Whoever, falsely and with intent to defraud, holds him-
29 self out as or represents or pretends himself to be a member of, asso-
30 ciated with, or an agent or representative for the 4-H clubs, an orga-
31 nization established by the Extension Service of the United States
32 Department of Agriculture and the land grant colleges, is guilty of a
33 Class B misdemeanor.

34 **"SMOKEY BEAR" CHARACTER OR NAME**

35 **SEC. 209.** Whoever, except as authorized under rules and regulations
36 issued by the Secretary of Agriculture after consultation with the
37 Association of State Foresters and the Advertising Council, knowingly
38 manufactures, reproduces, or uses the character "Smokey Bear",
39 originated by the Forest Service, United States Department of Agri-

1 culture, in cooperation with the Association of State Foresters and
 2 the Advertising Council for use in public information concerning the
 3 prevention of forest fires, or any facsimile thereof, or the name
 4 "Smokey Bear" as a trade name or in such manner as suggests the
 5 character "Smokey Bear" is guilty of a Class B misdemeanor.

6 SEC. 210. Section 14 of the Act of August 31, 1964, as amended (78
 7 Stat. 708, 7 U.S.C. 2023) is amended by deleting the word "obliga-
 8 tions" in subsection (d) and inserting in lieu thereof the word "writ-
 9 ings", and by deleting the words "section 8" in subsection (d) and
 10 inserting in lieu thereof the words "section 1745".

11 AMENDMENTS RELATING TO ALIENS AND NATIONALITY—TITLE 8,
 12 UNITED STATES CODE

13 FALSE REPRESENTATION OF CITIZENSHIP

14 SEC. 211. Whoever falsely and willfully represents himself to be a
 15 citizen of the United States is guilty of a Class A misdemeanor.

16 SALE OF NATURALIZATION OR CITIZENSHIP PAPERS

17 SEC. 212. Whoever unlawfully sells or disposes of a declaration of
 18 intention to become a citizen, certificate of naturalization, certificate of
 19 citizenship or copies or duplicates or other documentary evidence of
 20 naturalization or citizenship, is guilty of a Class A misdemeanor.

21 SURRENDER OF CANCELED NATURALIZATION CERTIFICATE

22 SEC. 213. Whoever, having in his possession or control a certificate of
 23 naturalization or citizenship or a copy thereof which has been canceled
 24 as provided by law, fails to surrender the same after at least sixty days'
 25 notice by the appropriate court or the Commissioner or Deputy Com-
 26 missioner of Immigration, is guilty of a Class A misdemeanor.

27 SEC. 214. The Immigration and Nationality Act, as amended (66
 28 Stat. 166, 8 U.S.C. 1101 et seq.) is amended as follows:

29 (a) Section 241 of the Act, as amended (66 Stat. 204, 8 U.S.C. 1251),
 30 is amended—

31 (1) by deleting the words "has been convicted under section
 32 1546 of title 18, United States Code" in subsection (a) (5) and in-
 33 serting in lieu thereof the words "has been convicted under section
 34 1221 or 1222 of title 18, or under section 1741 of title 18 if the
 35 offense involves the forging or counterfeiting of an immigrant
 36 or nonimmigrant visa, permit, or other document for entry into
 37 the United States, or under section 1744 of title 18 if the offense
 38 involves a counterfeiting implement fitted for the counterfeiting
 39 of any such document, or under section 1341 or 1343 of title 18 if
 40 the offense relates to any application, affidavit, or other document
 41 required by the immigration laws";

(2) by deleting the words “sections 791, 792, 793, 794, 2388, and 3241, title 18, United States Code”, in subsection (a) (17) and inserting in lieu thereof the words “sections 1114, 1117, 1121, 1122, 1123, and 1124 of title 18, United States Code”; section 1311 of title 18 if the offense is under subsection (a) (1) (A) and the offender knows, or has reasonable grounds to believe or suspect, that the person harbored or concealed has committed, or is about to commit, an offense under section 1114, 1117, 1121, 1122, 1123 or 1124 of title 18”;

(3) by deleting the words “sections 2151, 2153, 2154, 2155, and 2156 of title 18” in subsection (a) (17) and inserting in lieu thereof the words sections 1111 and 1112 of title 18”;

(4) by deleting the words “an Act entitled ‘An Act to punish persons who make threats against the President of the United States’, approved February 14, 1917; section 871 of title 18, United States Code,” in subsection (a) (17) and inserting in lieu thereof the words “section 1616, 1617, or 1618 of title 18, United States Code, if the victim of the offense is the President of the United States, the President-elect, the Vice President or other officer next in order of succession to the office of President of the United States, or the Vice President-elect”;

(5) by deleting the words “section 2384 of title 18” in subsection (a) (17) and inserting in lieu thereof the words “section 1101 or 1103 of title 18”; and

(6) by deleting the words “section 960 of title 18” in subsection (a) (17) and inserting in lieu thereof the words “section 1201 of title 18”;

(b) Section 287 of the Act (66 Stat. 233, 8 U.S.C. 1357), is amended by deleting the words “section 1621” in subsection (b) and inserting in lieu thereof the words “section 1341”; and

(c) Section 349 of the Act, as amended (66 Stat. 267, 8 U.S.C. 1481), is amended by deleting the words “section 2383 of title 18, United States Code, or willfully performing any act in violation of section 2385 or title 18, United States Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them” in subsection (a) (9) and inserting in lieu thereof the words “section 1101, 1102, or 1103 of title 18”.

1 AMENDMENTS RELATING TO THE ARMED FORCES—TITLE 10, UNITED
2 STATES CODE

3 SEC. 215. (a) Chapter 3 of title 10, United States Code, is amended
4 as follows:

5 (1) A new section 127 is added at the end thereof as follows:

6 **“§ 127. Use of Army and Air Force as posse comitatus**

7 “Whoever, except in cases and under circumstances expressly au-
8 thorized by the Constitution or Act of Congress, willfully uses any
9 part of the Army or the Air Force as a posse comitatus or otherwise
10 to execute the laws is guilty of a Class A misdemeanor.”; and

11 (2) The analysis at the beginning of the chapter is amended by
12 adding at the end thereof the following new item:

“127. Use of Army and Air Force as posse comitatus.”

13 (b) Chapter 45 of title 10, United States Code, is amended as
14 follows:

15 (1) Section 774 is redesignated as section 776;

16 (2) The following new sections are added after section 773:

17 **“§ 774. Discrimination against person wearing uniform of armed**
18 **forces**

19 “Whoever, being a proprietor, manager, or employee of a theater
20 or other public place of entertainment or amusement in the District
21 of Columbia, or in any Territory, or Possession of the United States,
22 causes any person wearing the uniform of any of the armed forces
23 of the United States to be discriminated against because of that uni-
24 form, shall be fined not more than \$500.

25 **“§ 775. Unauthorized use of uniform of armed forces**

26 “Whoever, in any place within the jurisdiction of the United States
27 or in the Canal Zone, without authority, wears the uniform or a dis-
28 tinctive part thereof or anything similar to a distinctive part of the
29 uniform of any of the armed forces of the United States, or any auxi-
30 liary of such, is guilty of a Class B misdemeanor.”; and

31 (3) The analysis at the beginning of the chapter is amended by
32 deleting

“774. Applicability of chapter.”

33 and inserting in lieu thereof:

“774. Discrimination against person wearing uniform of armed forces.

“775. Unauthorized use of uniform of armed forces.

“776. Applicability of chapter.”

34 (c) Chapter 57 of title 10, United States Code, is amended as
35 follows:

36 (1) A new section 1127 is added at the end thereof as follows:

§ 1127. Unauthorized wearing, manufacture, or sale of military medals or decorations

“Whoever knowingly wears, manufactures, or sells any decoration or medal authorized by Congress for the armed forces of the United States, or any of the service medals or badges awarded to the members of such forces, or the ribbon, button, or rosette or any such badge, decoration or medal, or any colorable imitation thereof, except when authorized under regulations made pursuant to law, is guilty of a Class B misdemeanor.”; and

(2) The analysis at the beginning of the chapter is amended by adding the following new item at the end thereof:

“1127. Unauthorized wearing, manufacture, or sale of military medals or decorations.”

(d) Chapter 75 of title 10, United States Code, is amended as follows:

(1) A new section 1489 is added at the end thereof as follows:

“§ 1489. Cremation urns for military use

“Whoever knowingly uses, manufactures, or sells any cremation urn of a design approved by the Secretary of Defense for use to retain the cremated remains of deceased members of the armed forces or an urn which is a colorable imitation of the approved design, except when authorized under regulation made pursuant to law, is guilty of a Class B misdemeanor.”; and

(2) The analysis at the beginning of the chapter is amended by adding at the end thereof the following new item:

“1489. Cremation urns for military use.”

AMENDMENTS RELATING TO BANKRUPTCY—TITLE 11, UNITED STATES CODE

ADVERSE INTEREST AND CONDUCT OF REFEREES AND OTHER OFFICERS

SEC. 216. Whoever knowingly acts as a referee in a case in which he is directly or indirectly interested; or

Whoever, being a referee, receiver, custodian, trustee, marshal, or other officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he is such officer in a bankruptcy proceeding; or

Whoever being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so—

Shall be fined not more than \$500, and shall forfeit his office, which shall thereupon become vacant.

FEE AGREEMENTS IN BANKRUPTCY PROCEEDINGS

SEC. 217. Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership, bankruptcy or reorganization proceeding in any United States court or under its supervision, enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate; or

Whoever, being a judge of a court of the United States knowingly approves the payment of any fees or compensation so fixed—

Is guilty of a Class A misdemeanor.

SEC. 218. Section 14 of the Bankruptcy Act, as amended (30 Stat. 550, 11 U.S.C. 32), is amended by deleting the words “title 18, United States Code, section 152,” in subsection (c) and inserting in lieu thereof the words “section 1764 of title 18, United States Code”.

SEC. 219. Section 64 of the Bankruptcy Act, as amended (30 Stat. 563, 11 U.S.C. 104), is amended by deleting the words “Chapter 9 of Title 18 of the United States Code” both times they appear and inserting in lieu thereof the words “section 216 or 217 of the Criminal Code Reform Act of 1973 (11 U.S.C. or) or under section 1764 of title 18, United States Code.”

AMENDMENTS RELATING TO BANKS AND BANKING—TITLE 12,

UNITED STATES CODE

OFFER OF LOAN OR GRATUITY TO BANK EXAMINER

SEC. 220. Whoever, being an officer, director or employee of a bank which is a member of the Federal Reserve System or the deposits of which are insured by the Federal Deposit Insurance Corporation, or of any National Agricultural Credit Corporation, or of any land bank, Federal land bank association or other institution subject to examination by a farm credit examiner, or of any small business investment company, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, corporation, or institution, is guilty of a Class A misdemeanor, and in addition to the fine for such misdemeanor, he may be fined a further sum equal to the money so loaned or gratuity given.

The provisions of this section and section 3621 of title 18 shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System or insured banks, or National

1 Agricultural Credit Corporations, whether appointed by the Comp-
2 troller of the Currency, by the Board of Governors of the Federal
3 Reserve System, by a Federal Reserve Agent, by a Federal Reserve
4 bank or by the Federal Deposit Insurance Corporation, or appointed
5 or elected under the laws of any state; but shall not apply to private
6 examiners or assistant examiners employed only by a clearinghouse
7 association or by the directors of a bank.

8 ACCEPTANCE OF LOAN OR GRATUITY BY BANK EXAMINER

9 SEC. 221. Whoever, being an examiner or assistant examiner of mem-
10 ber banks of the Federal Reserve System or banks the deposits of
11 which are insured by the Federal Deposit Insurance Corporation, or
12 a farm credit examiner or examiner of National Agricultural Credit
13 Corporations, or an examiner of small business investment companies,
14 accepts a loan or gratuity from any bank, corporation, association or
15 organization examined by him or from any person connected there-
16 with, is guilty of a Class A misdemeanor and is disqualified from hold-
17 ing office as such examiner.

18 DISCLOSURE OF INFORMATION BY BANK EXAMINER

19 SEC. 222. Whoever, being an examiner, public or private, discloses
20 the names of borrowers or the collateral for loans of any member bank
21 of the Federal Reserve System, or bank insured by the Federal Deposit
22 Insurance Corporation, examined by him, to other than the proper
23 officers of such bank, without first having obtained the express permis-
24 sion in writing from the Comptroller of the Currency as to a national
25 bank, the Board of Governors of the Federal Reserve System as to a
26 State member bank, or the Federal Deposit Insurance Corporation
27 as to any other insured bank, or from the board of directors of such
28 bank, except when ordered to do so by a court of competent jurisdic-
29 tion, or by direction of the Congress of the United States, or either
30 House thereof, or any committee of Congress or either House duly
31 authorized, is guilty of a Class A misdemeanor.

32 DISCLOSURE OF INFORMATION BY A FARM CREDIT EXAMINER

33 SEC. 223. Whoever, being a farm credit examiner or any examiner,
34 public or private, discloses the names of borrowers of any Federal land
35 bank association, Federal land bank, or joint-stock land bank, or any
36 organization examined by him under the provisions of law relating to
37 Federal intermediate credit banks, to other than the proper officers
38 of such institution or organization, without first having obtained ex-
39 press permission in writing from the Land Bank Commissioner or
40 from the board of directors of such institution or organization, except

1 when ordered to do so by a court of competent jurisdiction or by direc-
2 tion of the Congress of the United States or either House thereof, or
3 any committee of Congress or either House duly authorized, is guilty
4 of a Class A misdemeanor; and shall be disqualified from holding office
5 as a farm credit examiner.

6 DISCLOSURE OF INFORMATION BY NATIONAL AGRICULTURAL CREDIT
7 CORPORATION EXAMINER

8 SEC. 224. Whoever, being an examiner appointed under the pro-
9 visions of law relating to National Agricultural Credit Corporations,
10 discloses the names of borrowers of any organization examined by him,
11 to other than the proper officers of such organization, without first
12 having obtained express permission in writing from the Comptroller
13 of the Currency or from the board of directors of such organization,
14 except when ordered to do so by a court of competent jurisdiction or
15 by direction of the Congress of the United States or either House
16 thereof, or any committee of Congress or either House duly au-
17 thorized, is guilty of a Class A misdemeanor; and shall be disqualified
18 from holding office as such examiner.

19 EXAMINER PERFORMING OTHER SERVICES

20 SEC. 225. Whoever, being a national-bank examiner, Federal Deposit
21 Insurance Corporation examiner, farm credit examiner, or an examiner
22 of National Agricultural Credit Corporations, performs any other
23 service, for compensation, for any bank or banking or loan associa-
24 tion, or for any officer, director, or employee thereof, or for any person
25 connected therewith in any capacity, is guilty of a Class A mis-
26 demeanor.

27 MUTILATION OF NATIONAL BANK OBLIGATIONS

28 SEC. 226. Whoever mutilates, cuts, defaces, disfigures, or perforates,
29 or unites or cements together, or does any other thing to any bank bill,
30 draft, note, or other evidence of debt issued by any national banking
31 association, or Federal Reserve Bank, or the Federal Reserve System,
32 with intent to render such bank bill, draft, note, or other evidence of
33 debt unfit to be reissued, is guilty of a Class B misdemeanor.

34 RUMORS REGARDING FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

35 SEC. 227. Whoever willfully and knowingly makes, circulates, or
36 transmits to another or others any statement or rumor, written, printed
37 or by word of mouth, which is untrue in fact and is directly or by infer-
38 ence derogatory to the financial condition or affects the solvency or
39 financial standing of the Federal Savings and Loan Insurance Cor-
40 poration, is guilty of a Class A misdemeanor.

1 FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE FEDERAL AGENCY

2 SEC. 228. Whoever, except as permitted by the laws of the United
3 States, uses the words "national", "Federal", "United States", "re-
4 serve", or "Deposit Insurance" as part of the business or firm name
5 of a person, corporation, partnership, business trust, association or
6 other business entity engaged in the banking, loan, building and loan,
7 brokerage, factorage, insurance, indemnity, savings or trust business;
8 or

9 Whoever falsely advertises or represents, or publishes or displays
10 any sign, symbol or advertisement reasonably calculated to convey the
11 impression that a nonmember bank, banking association, firm or part-
12 nership is a member of the Federal reserve system; or

13 Whoever, except as expressly authorized by Federal law, uses the
14 words "Federal Deposit", "Federal Deposit Insurance", or "Federal
15 Deposit Insurance Corporation" or a combination of any three of these
16 words, as the name or a part thereof under which he or it does busi-
17 ness, or advertises or otherwise represents falsely by any device what-
18 soever that his or its deposit liabilities, obligations, certificates, or
19 shares are insured or guaranteed by the Federal Deposit Insurance
20 Corporation, or by the United States or by any instrumentality
21 thereof, or whoever advertises that his or its deposits, shares, or
22 accounts are federally insured, or falsely advertises or otherwise repre-
23 sents by any device whatsoever the extent to which or the manner in
24 which the deposit liabilities of an insured bank or banks are insured
25 by the Federal Deposit Insurance Corporation; or

26 Whoever falsely advertises or otherwise represents by any device
27 whatsoever that his or its deposit liabilities, obligations, certificates, or
28 shares are insured under the Federal Credit Union Act or by the
29 United States or any instrumentality thereof, or, being an insured
30 credit union as defined in that Act falsely advertises or otherwise
31 represents by any device whatsoever the extent to which or the man-
32 ner in which shareholdings in such credit union are insured under such
33 Act; or

34 Whoever, not being organized under chapter 7 of Title 12, adver-
35 tises or represents that it makes Federal Farm loans or advertises or
36 offers for sale as Federal Farm loan bonds any bond not issued under
37 chapter 7 of Title 12, or uses the word "Federal" or the words "United
38 States" or any other words implying Government ownership, obliga-
39 tion or supervision in advertising or offering for sale any bond, note,
40 mortgage or other security not issued by the Government of the United

1 States under the provisions of said chapter 7 or some other Act of
2 Congress; or

3 Whoever uses the words "Federal Home Loan Bank" or any combi-
4 nation or variation of these words alone or with other words as a busi-
5 ness name or part of a business name, or falsely publishes, advertises
6 or represents by any device or symbol or other means reasonably cal-
7 culated to convey the impression that he or it is a Federal Home Loan
8 Bank or member of or subscriber for the stock of a Federal Home Loan
9 Bank; or

10 Whoever uses the words "National Agricultural Credit Corpora-
11 tion" as part of the business or firm name of a person, corporation,
12 partnership, business trust, association or other business entity not
13 organized under the laws of the United States as a National Agricul-
14 tural Credit Corporation; or

15 Whoever uses the words "Federal intermediate credit bank" as part
16 of the business or firm name for any person, corporation, partnership,
17 business trust, association or other business entity not organized as an
18 intermediate credit bank under the laws of the United States; or

19 Whoever uses as a firm or business name the words "Department of
20 Housing and Urban Development", "Housing and Home Finance
21 Agency", "Federal Housing Administration", "Government National
22 Mortgage Association", "United States Housing Authority", or "Pub-
23 lic Housing Administration" or the letters "HUD", "FHA", "PHA",
24 or "USHA", or any combination or variation of those words or the
25 letters "HUD", "FHA", "PHA", or "USHA" alone or with other
26 words or letters reasonably calculated to convey the false impression
27 that such name or business has some connection with, or authorization
28 from, the Department of Housing and Urban Development, the Hous-
29 ing and Home Finance Agency, the Federal Housing Administration,
30 the Government National Mortgage Association, the United States
31 Housing Authority, the Public Housing Administration, the Govern-
32 ment of the United States, or any agency thereof, which does not in
33 fact exist, or falsely claims that any repair, improvement, or altera-
34 tion of any existing structure is required or recommended by the
35 Department of Housing and Urban Development, the Housing and
36 Home Finance Agency, the Federal Housing Administration, the
37 Government National Mortgage Association, the United States Hous-
38 ing Authority, the Public Housing Administration, the Government
39 of the United States, or any agency thereof, for the purpose of inducing
40 any person to enter into a contract for the making of such repairs,

1 alterations, or improvements, or falsely advertises or falsely represents
2 by any device whatsoever that any housing unit, project, business, or
3 product has been in any way endorsed, authorized, inspected,
4 appraised, or approved by the Department of Housing and Urban
5 Development, the Housing and Home Finance Agency, the Federal
6 Housing Administration, the Government National Mortgage Asso-
7 ciation, the United States Housing Authority, the Public Housing
8 Administration, the Government of the United States, or any agency
9 thereof—

10 Shall be punished as follows: a corporation, partnership, business
11 trust, association, or other business entity, by a fine of not more than
12 \$10,000; an officer or member thereof participating or knowingly
13 acquiescing in such violation or any individual violating this section
14 is guilty of a Class A misdemeanor.

15 This section shall not make unlawful the use of any name or title
16 which was lawful on June 25, 1948.

17 This section shall not make unlawful the use of the word “national”
18 as part of the name of any business or firm engaged in the insurance
19 or indemnity business, whether such firm was engaged in the insurance
20 or indemnity business prior or subsequent to the date of enactment
21 of this paragraph.

22 A violation of this section may be enjoined at the suit of the United
23 States Attorney, upon complaint by any duly authorized representative
24 of any department or agency of the United States.

25 PARTICIPATION BY FINANCIAL INSTITUTIONS

26 SEC. 229. Whoever knowingly violates section 5136A of the Revised
27 Statutes of the United States, section 9A of the Federal Reserve Act,
28 section 20 of the Federal Deposit Insurance Act, or section 410 of the
29 National Housing Act is guilty of a Class A misdemeanor.

30 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSACTIONS

31 SEC. 230. Whoever induces or influences the Department of Housing
32 and Urban Development to purchase or acquire any property or to
33 enter into any contract and willfully fails to disclose any interest
34 which he has in such property or in the property to which such con-
35 tract relates, or any special benefit which he expects to receive as a
36 result of such contract—

37 Is guilty of a Class A misdemeanor.

38 SEC. 231. Section 209 of the Bank Conservation Act, as amended
39 (48 Stat. 5, 12 U.S.C. 209), is amended by deleting the words “by
40 sections 334, 656, and 1005 of Title 18, United States Code; and
41 sections 202, 216, 281, 431, 432, and 433 of such Title 18” and inserting

1 in lieu thereof the words "under sections 1731, 1741 and 1742 of title
2 18; and sections 9101, 9110, 9111 and 9112 of title 5 and section 1751
3 of title 18".

4 SEC. 232. Section 9 of the Act of December 23, 1913, as amended
5 (38 Stat. 259, 12 U.S.C. 324), is amended by deleting the words
6 "sections 334, 656, and 1005" and inserting in lieu thereof the words
7 "sections 1731, 1741, and 1742".

8 SEC. 233. Section 22(f) of the Act of December 23, 1913 as added
9 by section 5 of the Act of September 26, 1918, and amended (40
10 Stat. 970, 12 U.S.C. 503) is amended by deleting the words "sections
11 217, 218, 219, 220, 655, 1005, 1014, 1906, or 1909 of Title 18, United
12 States Code" and inserting in lieu thereof the words "section 9109
13 of title 5, section 1343, 1351, 1352, 1353, 1731, 1741, or 1742 of title
14 18 or section 222 or 225 of the Criminal Code Reform Act of 1973
15 (12 U.S.C. and)".

16 SEC. 234. Section 11 of the Act of July 31, 1945, as amended (59
17 Stat. 529, 12 U.S.C. 635h), is amended by deleting the words "section
18 955 of Title 18, United States Code" and inserting in lieu thereof
19 the words "section 297 of the Criminal Code Reform Act of 1973
20 (22 U.S.C.)".

21 SEC. 235. Section 308 of the Act of July 24, 1970 (84 Stat. 456, 12
22 U.S.C. 1457) is amended—

23 (a) by amending subsection (b) to read as follows:

24 "(b) The provisions of sections 1343, 1732 and 1751 of title 18 apply
25 to and with respect to the Corporation.";

26 (b) by amending subsection (e) to read as follows:

27 "(e) The terms 'agency' and 'agencies' shall be deemed to include
28 the Corporation wherever used with reference to an agency or agencies
29 of the United States in section 172 of title 4 and in sections 9101, 9102,
30 9104, 9106, 9107 and 9108 of title 5. Any officer or employee of the
31 Corporation shall be deemed to be a federal public servant within the
32 meaning of sections 1351, 1352, 1353, 1354, 1524, 1525, 1722, 1723, 1731,
33 1732, 1741, and 1742 of title 18."; and

34 (c) by amending subsection (f) to read as follows:

35 "(f) The terms 'obligation of any United States' and 'obligation
36 or other security of the United States' in sections 1741, 1742, and 1745
37 of title 18, and in sections 325 and 329 of the Criminal Code Reform
38 Act of 1973 (31 U.S.C. and) are extended to include any obliga-
39 tion or other security of or issued by the Corporation."

40 SEC. 236. Section 408 of the Act of June 27, 1934, as added by the

1 Act of September 23, 1959, and amended (73 Stat. 691, 12 U.S.C.
2 1730a), is amended by deleting the words "section 1006" in subsection
3 (j) (3) and inserting in lieu thereof the words "section 1343".

4 SEC. 237. Section 8 of the Act of May 9, 1956 (70 Stat. 138, 12 U.S.C.
5 1847), is amended by deleting the words "section 1005" and inserting
6 in lieu thereof the words "section 1343".

7 AMENDMENTS RELATING TO COMMERCE AND TRADE—TITLE 15,
8 UNITED STATES CODE

9 AMENDMENTS RELATING TO IMPORTATION, MANUFACTURE, DISTRIBUTION,
10 AND STORAGE OF EXPLOSIVE MATERIALS

11 SEC. 238. DEFINITIONS.—As used in sections 238 to 245 of the Crimi-
12 nal Code Reform Act of 1973 (15 U.S.C. to)—

13 (a) "Person" means any individual, corporation, company, associ-
14 ation, firm, partnership, society, or joint stock company.

15 (b) "Interstate or foreign commerce" means commerce between any
16 place in a State and any place outside of that State, or within any
17 possession of the United States (not including the Canal Zone) or
18 the District of Columbia, and commerce between places within the
19 same State but through any place outside of that State. "State" in-
20 cludes the District of Columbia, the Commonwealth of Puerto Rico,
21 and the possessions of the United States (not including the Canal
22 Zone).

23 (c) "Explosive materials" means explosives, blasting agents, and
24 detonators.

25 (d) "Explosives" means any chemical compound, mixture, or de-
26 vice, the primary or common purpose of which is to function by ex-
27 plosion; the term includes, but is not limited to, dynamite and other
28 high explosives, black powder, pellet powder, initiating explosives,
29 detonators, safety fuses, squibs, detonating cord, igniter cord, and
30 igniters. The Secretary shall publish and revise at least annually in
31 the Federal Register a list of these and any additional explosives
32 which he determines to be within the coverage of this chapter.

33 (e) "Blasting agent" means any material or mixture, consisting
34 of fuel and oxidizer, intended for blasting, not otherwise defined as
35 an explosive: *Provided*, That the finished product, as mixed for use or
36 shipment, cannot be detonated by means of a numbered 8 test blasting
37 cap when unconfined.

38 (f) "Detonator" means any device containing a detonating charge
39 that is used for initiating detonation in an explosive; the term includes,
40 but is not limited to, electric blasting caps of instantaneous and delay

1 types, blasting caps for use with safety fuses and detonating-cord delay
2 connectors.

3 (g) "Importer" means any person engaged in the business of im-
4 porting or bringing explosive materials into the United States for pur-
5 poses of sale or distribution.

6 (h) "Manufacturer" means any person engaged in the business of
7 manufacturing explosive materials for purposes of sale or distribution
8 or for his own use.

9 (i) "Dealer" means any person engaged in the business of dis-
10 tributing explosive materials at wholesale or retail.

11 (j) "Permittee" means any user of explosives for a lawful purpose,
12 who has obtained a user permit under the provisions of this chapter.

13 (k) "Secretary" means the Secretary of the Treasury or his delegate.

14 (l) "Crime punishable by imprisonment for a term exceeding one
15 year" shall not mean (1) any Federal or State offenses pertaining to
16 antitrust violations, unfair trade practices, restraints of trade, or other
17 similar offenses relating to the regulation of business practices as the
18 Secretary may by regulation designate, or (2) any State offense (other
19 than one involving a firearm or explosive) classified by the laws of
20 the State as a misdemeanor and punishable by a term of imprison-
21 ment of two years or less.

22 (m) "Licensee" means any importer, manufacturer, or dealer li-
23 censed under the provisions of sections 238 to 245 of this Act.

24 (n) "Distribute" means sell, issue, give, transfer, or otherwise dis-
25 pose of.

26 UNLAWFUL ACTS

27 SEC. 239. (a) It shall be unlawful for any person—

28 (1) to engage in the business of importing, manufacturing, or
29 dealing in explosive materials without a license issued under sec-
30 tions 238 to 245 of this Act;

31 (2) knowingly to withhold information or to make any false
32 or fictitious oral or written statement or to furnish or exhibit any
33 false, fictitious, or misrepresented identification, intended or likely
34 to deceive for the purpose of obtaining explosive materials, or a
35 license, permit, exemption, or relief from disability under the
36 provisions of sections 238 to 245 of this Act; and

37 (3) other than a licensee or permittee knowingly—

38 (A) to transport, ship, cause to be transported, or receive
39 in interstate or foreign commerce any explosive materials,
40 except that a person who lawfully purchases explosive mate-

1 rials from a licensee in a State contiguous to the State in
2 which the purchaser resides may ship, transport, or cause to
3 be transported such explosive materials to the State in which
4 he resides and may receive such explosive materials in the
5 State in which he resides, if such transportation, shipment,
6 or receipt is permitted by the law of the State in which he
7 resides; or

8 (B) to distribute explosive materials to any person (other
9 than a licensee or permittee) who the distributor knows or
10 has reasonable cause to believe does not reside in the State in
11 which the distributor resides.

12 (b) It shall be unlawful for any licensee knowingly to distribute
13 any explosive materials to any person except—

14 (1) a licensee;

15 (2) a permittee; or

16 (3) a resident of the State where distribution is made and in
17 which the licensee is licensed to do business or a State contiguous
18 thereto if permitted by the law of the State of the purchaser's
19 residence.

20 (c) It shall be unlawful for any licensee to distribute explosive
21 materials to any person who the licensee has reason to believe intends
22 to transport such explosive materials into a State where the purchase,
23 possession, or use of explosive materials is prohibited or which does
24 not permit its residents to transport or ship explosive materials into
25 it or to receive explosive materials in it.

26 (d) It shall be unlawful for any licensee knowingly to distribute
27 explosive materials to any individual who:

28 (1) is under twenty-one years of age;

29 (2) has been convicted in any court of a crime punishable by
30 imprisonment for a term exceeding one year;

31 (3) is under indictment for a crime punishable by imprison-
32 ment for a term exceeding one year;

33 (4) is a fugitive from justice;

34 (5) is an unlawful user of or is addicted to marihuana or any
35 depressant or stimulant substance or narcotic drug as those terms
36 are defined in the Controlled Substances Act (21 U.S.C. 802); or

37 (6) has been adjudicated a mental defective.

38 (e) It shall be unlawful for any licensee knowingly to distribute
39 any explosive materials to any person in any State where the pur-
40 chase, possession, or use by such person of such explosive materials

1 would be in violation of any State law or any published ordinance
2 applicable at the place of distribution.

3 (f) It shall be unlawful for any licensee or permittee willfully to
4 manufacture, import, purchase, distribute, or receive explosive mater-
5 ials without making such records as the Secretary may by regulation
6 require, including, but not limited to a statement of intended use, the
7 name, date, place of birth, social security number or taxpayer identi-
8 fication number, and place of residence of any natural person to whom
9 explosive materials are distributed. If explosive materials are distrib-
10 uted to a corporation or other business entity, such records shall include
11 the identity and principal and local places of business and the name,
12 date, place of birth, and place of residence of the natural person acting
13 as agent of the corporation or other business entity in arranging the
14 distribution.

15 (g) It shall be unlawful for any licensee or permittee knowingly to
16 make any false entry in any record which he is required to keep pur-
17 suant to this section or regulations promulgated under section 244 of
18 this Act (15 U.S.C.).

19 (h) It shall be unlawful for any person to receive, conceal, transport,
20 ship, store, barter, sell, or dispose of any explosive materials knowing
21 or having reasonable cause to believe that such explosive materials were
22 stolen.

23 (i) It shall be unlawful for any person—

24 (1) who is under indictment for or who has been convicted in
25 any court of, a crime punishable by imprisonment for a term
26 exceeding one year;

27 (2) who is a fugitive from justice;

28 (3) who is an unlawful user of or addicted to marihuana or
29 any depressant or stimulant substance or narcotic drug as those
30 terms are defined in the Controlled Substances Act (21 U.S.C.
31 802); or

32 (4) who has been adjudicated as a mental defective or who has
33 been committed to a mental institution;

34 to ship or transport any explosive in interstate or foreign commerce
35 or to receive any explosive which has been shipped or transported in
36 interstate or foreign commerce.

37 (j) It shall be unlawful for any person to store any explosive mate-
38 rial in a manner not in conformity with regulations promulgated by
39 the Secretary. In promulgating such regulations, the Secretary shall
40 take into consideration the class, type, and quantity of explosive mate-

rials to be stored, as well as the standards of safety and security recognized in the explosives industry.

LICENSES AND USER PERMITS

(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 239(d) of this Act (15 U.S.C.);

1 (c) The Secretary shall approve or deny an application within a
2 period of forty-five days beginning on the date such application is
3 received by the Secretary.

4 (d) The Secretary may revoke any license or permit issued under
5 this section if in the opinion of the Secretary the holder thereof has
6 violated any provision of sections 238 to 245 of this Act or any rule
7 or regulation prescribed by the Secretary under those sections, or has
8 become ineligible to acquire explosive materials under section 239(d).
9 The Secretary's action under this subsection may be reviewed only
10 as provided in subsection (e) (2) of this section.

11 (e) (1) Any person whose application is denied or whose license or
12 permit is revoked shall receive a written notice from the Secretary
13 stating the specific grounds upon which such denial or revocation is
14 based. Any notice of a revocation of a license or permit shall be given
15 to the holder of such license or permit prior to or concurrently with
16 the effective date of the revocation.

17 (2) If the Secretary denies an application for, or revokes a license,
18 or permit, he shall, upon request by the aggrieved party, promptly hold
19 a hearing to review his denial or revocation. In the case of a revocation,
20 the Secretary may upon a request of the holder stay the effective date
21 of the revocation. A hearing under this section shall be at a location con-
22 venient to the aggrieved party. The Secretary shall give written notice
23 of his decision to the aggrieved party within a reasonable time after
24 the hearing. The aggrieved party may, within sixty days after receipt
25 of the Secretary's written decision, file a petition with the United
26 States Court of Appeals for the district in which he resides or has his
27 principal place of business for a judicial review of such denial or re-
28 vocation, pursuant to sections 701-706 of title 5, United States Code.

29 (f) Licensees and permittees shall make available for inspection at
30 all reasonable times their records kept pursuant to sections 238 to 245 of
31 this Act or the regulations issued thereunder, and shall submit to the
32 Secretary such reports and information with respect to such records
33 and the contents thereof as he shall by regulations prescribe. The Secre-
34 tary may enter during business hours the premises (including places
35 of storage) of any licensee or permittee, for the purpose of inspecting
36 or examining (1) any records or documents required to be kept by
37 such licensee or permittee, under the provisions of sections 238 to 245
38 of this Act or regulations issued thereunder, and (2) any explosive
39 materials kept or stored by such licensee or permittee at such premises.
40 Upon the request of any State or any political subdivision thereof, the

Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of sections 238 to 245 of this Act with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

PENALTIES

SEC. 241. Any person who violates subsection (a) through (i) of section 239 of this Act (15 U.S.C.) is guilty of an offense under section 1811 of title 18, United States Code. Any person who violates subsection (j) or (k) of section 239 of this Act is guilty of a Class A misdemeanor.

EXCEPTIONS; RELIEF FROM DISABILITIES

SEC. 242. (a) Sections 238 to 245 of this Act shall not apply to—

(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) black powder in quantities not to exceed five pounds; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of the United States.

(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by sections 238 to 245 of this Act with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such

1 indictment or conviction, and the Secretary may grant such relief
2 if it is established to his satisfaction that the circumstances regarding
3 the indictment or conviction, and the applicant's record and reputation,
4 are such that the applicant will not be likely to act in a manner dan-
5 gerous to public safety and that the granting of the relief will not be
6 contrary to the public interest. A licensee or permittee who makes
7 application for relief from the disabilities incurred under sections 238
8 to 245 of this Act by reason of indictment or conviction, shall not be
9 barred by such indictment or conviction from further operations under
10 his license or permit pending final action on an application for relief
11 filed pursuant to this section.

12 ADDITIONAL POWERS OF THE SECRETARY

13 SEC. 243. The Secretary is authorized to inspect the site of any ac-
14 cident, or fire, in which there is reason to believe that explosive ma-
15 terials were involved, in order that if any such incident has been
16 brought about by accidental means, precautions may be taken to pre-
17 vent similar accidents from occurring. In order to carry out the pur-
18 pose of this subsection, the Secretary is authorized to enter into or
19 upon any property where explosive materials have been used, are
20 suspected of having been used, or have been found in an otherwise
21 unauthorized location. Nothing in sections 238 to 244 of this Act
22 shall be construed as modifying or otherwise affecting in any way
23 the investigative authority of any other Federal agency. In addition
24 to any other investigatory authority they have with respect to viola-
25 tions of provisions of sections 238 to 245, the Attorney General and the
26 Federal Bureau of Investigation, together with the Secretary, shall
27 have authority to conduct investigations with respect to violations of
28 section 1811 of title 18, United States Code, or of section 1813 of title 18
29 if the offense was a felony involving an explosive as defined in section
30 111 of title 18.

31 RULES AND REGULATIONS

32 SEC. 244. The administration of sections 238 to 245 of this Act shall
33 be vested in the Secretary. The Secretary may prescribe such rules and
34 regulations as he deems reasonably necessary to carry out the provi-
35 sions of those sections. The Secretary shall give reasonable public
36 notice, and afford to interested parties opportunity for hearing, prior
37 to prescribing such rules and regulations.

38 EFFECT ON STATE LAW

39 SEC. 245. No provision of sections 238 to 245 shall be construed as
40 indicating an intent on the part of the Congress to occupy the field

1 in which such provision operates to the exclusion of the law of any
2 State on the same subject matter, unless there is a direct and positive
3 conflict between such provision and the law of the State so that the two
4 cannot be reconciled or consistently stand together.

5 AMENDMENTS RELATING TO FIREARMS

6 SEC. 246. DEFINITIONS.—(a) As used in sections 246 to 251 of the
7 Criminal Code Reform Act of 1973 (15 U.S.C. to)—

8 (1) The term “person” and the term “whoever” include any individ-
9 ual, corporation, company, association, firm, partnership, society, or
10 joint stock company.

11 (2) The term “interstate or foreign commerce” includes commerce
12 between any place in a State and any place outside of that State, or
13 within any possession of the United States (not including the Canal
14 Zone) or the District of Columbia, but such term does not include com-
15 merce between places within the same State but through any place out-
16 side of that State. The term “State” includes the District of Columbia,
17 the Commonwealth of Puerto Rico, and the possessions of the United
18 States (not including the Canal Zone).

19 (3) The term “firearm” means (A) any weapon (including a starter
20 gun) which will or is designed to or may readily be converted to
21 expel a projectile by the action of an explosive; (B) the frame or
22 receiver of any such weapon; (C) any firearm muffler or firearm
23 silencer; or (D) any destructive device. Such term does not include
24 an antique firearm.

25 (4) The term “destructive device” means—

26 (A) any explosive, incendiary, or poison gas—

27 (i) bomb,

28 (ii) grenade,

29 (iii) rocket having a propellant charge of more than four
30 ounces,

31 (iv) missile having an explosive or incendiary charge of
32 more than one-quarter ounce,

33 (v) mine, or

34 (vi) device similar to any of the devices described in the
35 preceding clauses;

36 (B) any type of weapon (other than a shotgun or a shotgun
37 shell which the Secretary finds is generally recognized as par-
38 ticularly suitable for sporting purposes) by whatever name known
39 which will, or which may be readily converted to, expel a pro-
40 jectile by the action of an explosive or other propellant, and which

1 has any barrel with a bore of more than one-half inch in dia-
2 meter; and

3 (C) any combination of parts either designed or intended for
4 use in converting any device into any destructive device described
5 in subparagraph (A) or (B) and from which a destructive de-
6 vice may be readily assembled.

7 The term "destructive device" shall not include any device which is
8 neither designed nor redesigned for use as a weapon; any device, al-
9 though originally designed for use as a weapon, which is redesigned
10 for use as a signaling, pyrotechnic, line throwing, safety, or similar
11 device; surplus ordnance sold, loaned, or given by the Secretary of the
12 Army pursuant to the provisions of section 4684(2), 4685, or 4686 of
13 title 10; or any other device which the Secretary of the Treasury finds
14 is not likely to be used as a weapon, is an antique, or is a rifle which
15 the owner intends to use solely for sporting purposes.

16 (5) The term "shotgun" means a weapon designed or redesigned,
17 made or remade, and intended to be fired from the shoulder and de-
18 signed or redesigned and made or remade to use the energy of the
19 explosive in a fixed shotgun shell to fire through a smooth bore either
20 a number of ball shot or a single projectile for each single pull of the
21 trigger.

22 (6) The term "short-barreled shotgun" means a shotgun having one
23 or more barrels less than eighteen inches in length and any weapon
24 made from a shotgun (whether by alteration, modification or other-
25 wise) if such a weapon as modified has an overall length of less than
26 twenty-six inches.

27 (7) The term "rifle" means a weapon designed or redesigned, made
28 or remade, and intended to be fired from the shoulder and designed
29 or redesigned and made or remade to use the energy of the explosive
30 in a fixed metallic cartridge to fire only a single projectile through a
31 rifled bore for each single pull of the trigger.

32 (8) The term "short-barreled rifle" means a rifle having one or more
33 barrels less than sixteen inches in length and any weapon made from
34 a rifle (whether by alteration, modification, or otherwise) if such
35 weapon, as modified, has an overall length of less than twenty-six
36 inches.

37 (9) The term "importer" means any person engaged in the business
38 of importing or bringing firearms or ammunition into the United
39 States for purposes of sale or distribution; and the term "licensed

1 importer” means any such person licensed under the provisions of sec-
2 tions 246 to 251 of this Act.

3 (10) The term “manufacturer” means any person engaged in the
4 manufacture of firearms or ammunition for purposes of sale or dis-
5 tribution; and the term “licensed manufacturer” means any such per-
6 son licensed under the provisions of sections 246 to 251 of this Act.

7 (11) The term “dealer” means (A) any person engaged in the
8 business of selling firearms or ammunition at wholesale or retail, (B)
9 any person engaged in the business of repairing firearms or of mak-
10 ing or fitting special barrels, stocks, or trigger mechanisms to firearms,
11 or (C) any person who is a pawnbroker. The term “licensed dealer”
12 means any dealer who is licensed under the provisions of sections 246
13 to 251 of this Act.

14 (12) The term “pawnbroker” means any person whose business or
15 occupation includes the taking or receiving, by way of pledge or pawn,
16 of any firearm or ammunition as security for the payment or repay-
17 ment of money.

18 (13) The term “collector” means any person who acquires, holds, or
19 disposes of firearms or ammunition as curios or relics, as the Secretary
20 shall by regulation define, and the term “licensed collector” means any
21 such person licensed under the provisions of sections 246 to 251 of
22 this Act.

23 (14) The term “indictment” includes an indictment or informa-
24 tion in any court under which a crime punishable by imprisonment for
25 a term exceeding one year may be prosecuted.

26 (15) The term “fugitive from justice” means any person who has
27 fled from any State to avoid prosecution for a crime or to avoid giving
28 testimony in any criminal proceeding.

29 (16) The term “antique firearm” means—

30 (A) any firearm (including any firearm with a matchlock, flint-
31 lock, percussion cap, or similar type of ignition system) manufac-
32 tured in or before 1898; and

33 (B) any replica of any firearm described in subparagraph (A)
34 if such replica—

35 (i) is not designed or redesigned for using rimfire or con-
36 ventional centerfire fixed ammunition, or

37 (ii) uses rimfire or conventional centerfire fixed ammuni-
38 tion which is no longer manufactured in the United States
39 and which is not readily available in the ordinary channels
40 of commercial trade.

1 (17) The term “ammunition” means ammunition or cartridge cases.
2 primers, bullets, or propellant powder designed for use in any firearm.

3 (18) The term “Secretary” or “Secretary of the Treasury” means
4 the Secretary of the Treasury or his delegate.

5 (19) The term “published ordinance” means a published law of any
6 political subdivision of a State which the Secretary determines to be
7 relevant to the enforcement of sections 246 to 251 of this Act and
8 which is contained on a list compiled by the Secretary, which list shall
9 be published in the Federal Register, revised annually, and furnished
10 to each licensee under sections 246 to 251 of this Act.

11 (20) The term “crime punishable by imprisonment for a term ex-
12 ceeding one year” shall not include (A) any Federal or State offenses
13 pertaining to antitrust violations, unfair trade practices, restraints of
14 trade, or other similar offenses relating to the regulation of business
15 practices as the Secretary may by regulation designate, or (B) any
16 State offense (other than one involving a firearm or explosive) clas-
17 sified by the laws of the State as a misdemeanor and punishable by a
18 term of imprisonment of two years or less.

19 (b) For the purposes of sections 246 to 251 of this Act, a member
20 of the Armed Forces on active duty is a resident of the State in which
21 his permanent duty station is located.

22 UNLAWFUL ACTS

23 SEC. 247. (a) It shall be unlawful—

24 (1) for any person, except a licensed importer, licensed manu-
25 facturer, or licensed dealer, to engage in the business of importing,
26 manufacturing, or dealing in firearms or ammunition, or in the
27 course of such business to ship, transport, or receive any firearm or
28 ammunition in interstate or foreign commerce;

29 (2) for any importer, manufacturer, dealer, or collector licensed
30 under the provisions of sections 246 to 251 of this Act to ship or
31 transport in interstate or foreign commerce any firearm or am-
32 munition to any person other than a licensed importer, licensed
33 manufacturer, licensed dealer, or licensed collector, except that—

34 (A) this paragraph and subsection (b)(3) shall not be
35 held to preclude a licensed importer, licensed manufacturer,
36 licensed dealer, or licensed collector from returning a firearm
37 or replacement firearm of the same kind and type to a person
38 from whom it was received; and this paragraph shall not be
39 held to preclude an individual from mailing a firearm owned
40 in compliance with Federal, State, and local law to a licensed

1 importer, licensed manufacturer, or licensed dealer for the
2 sole purpose of repair or customizing;

3 (B) this paragraph shall not be held to preclude a licensed
4 importer, licensed manufacturer, or licensed dealer from
5 depositing a firearm for conveyance in the mails to any officer,
6 employee, agent, or watchman who, pursuant to the provisions
7 of section 6017 of title 39, is eligible to receive through the
8 mails pistols, revolvers, and other firearms capable of being
9 concealed on the person, for use in connection with his official
10 duty; and

11 (C) nothing in this paragraph shall be construed as apply-
12 ing in any manner in the District of Columbia, the Common-
13 wealth of Puerto Rico, or any possession of the United States
14 differently than it would apply if the District of Columbia,
15 the Commonwealth of Puerto Rico, or the possession were in
16 fact a State of the United States;

17 (3) for any person, other than a licensed importer, licensed
18 manufacturer, licensed dealer, or licensed collector to transport
19 into or receive in the State where he resides (or if the person is
20 a corporation or other business entity, the State where it main-
21 tains a place of business) any firearm purchased or otherwise ob-
22 tained by such person outside that State, except that this para-
23 graph (A) shall not preclude any person who lawfully acquires
24 a firearm by bequest or intestate succession in a State other than
25 his State of residence from transporting the firearm into or
26 receiving it in that State, if it is lawful for such person to pur-
27 chase or possess such firearm in that State, (B) shall not apply
28 to the transportation or receipt of a rifle or shotgun obtained in
29 conformity with the provisions of subsection (b) (3) of this sec-
30 tion, and (C) shall not apply to the transportation of any fire-
31 arm acquired in any State prior to December 16, 1968;

32 (4) for any person, other than a licensed importer, licensed
33 manufacturer, licensed dealer, or licensed collector, to transport
34 in interstate or foreign commerce any destructive device, machine-
35 gun (as defined in section 5845 of the Internal Revenue Code of
36 1954), short-barreled shotgun, or short-barreled rifle, except as
37 specifically authorized by the Secretary consistent with public
38 safety and necessity;

39 (5) for any person (other than a licensed importer, licensed
40 manufacturer, licensed dealer, or licensed collector) to transfer,

1 sell, trade, give, transport, or deliver any firearm to any person
2 (other than a licensed importer, licensed manufacturer, licensed
3 dealer, or licensed collector) who the transferor knows or has rea-
4 sonable cause to believe resides in any State other than that in
5 which the transferor resides (or other than that in which its place
6 of business is located if the transferor is a corporation or other
7 business entity); except that this paragraph shall not apply to
8 (A) the transfer, transportation, or delivery of a firearm made
9 to carry out a bequest of a firearm to, or an acquisition by intes-
10 tate succession of a firearm by, a person who is permitted to ac-
11 quire or possess a firearm under the laws of the State of his
12 residence, and (B) the loan or rental of a firearm to any person
13 for temporary use for lawful sporting purposes; and

14 (6) for any person in connection with the acquisition or at-
15 tempted acquisition of any firearm or ammunition from a li-
16 censed importer, licensed manufacturer, licensed dealer, or li-
17 censed collector, knowingly to make any false or fictitious oral or
18 written statement or to furnish or exhibit any false, fictitious, or
19 misrepresented identification, intended or likely to deceive such
20 importer, manufacturer, dealer, or collector with respect to any
21 fact material to the lawfulness of the sale or other disposition of
22 such firearm or ammunition under the provisions of sections 246
23 to 251 of this Act.

24 (b) It shall be unlawful for any licensed importer, licensed manu-
25 facturer, licensed dealer or licensed collector to sell or deliver—

26 (1) any firearm or ammunition to any individual who the
27 licensee knows or has reasonable cause to believe is less than eight-
28 een years of age, and, if the firearm, or ammunition is other than
29 a shotgun or rifle, or ammunition for a shotgun or rifle, to any
30 individual who the licensee knows or has reasonable cause to
31 believe is less than twenty-one years of age;

32 (2) any firearm or ammunition to any person in any State
33 where the purchase or possession by such person of such firearm
34 or ammunition would be in violation of any State law or any
35 published ordinance applicable at the place of sale, delivery or
36 other disposition, unless the licensee knows or has reasonable cause
37 to believe that the purchase or possession would not be in viola-
38 tion of such State law or such published ordinance;

39 (3) any firearm to any person who the licensee knows or has
40 reasonable cause to believe does not reside in (or if the person is

1 a corporation or other business entity, does not maintain a place
2 of business in) the State in which the licensee's place of business
3 is located, except that this paragraph (A) shall not apply to the
4 sale or delivery of a rifle or shotgun to a resident of a State con-
5 tiguous to the State in which the licensee's place of business is
6 located if the purchaser's State of residence permits such sale or
7 delivery by law, the sale fully complies with the legal conditions
8 of sale in both such contiguous States, and the purchaser and the
9 licensee have, prior to the sale, or delivery for sale, of the rifle or
10 shotgun, complied with all of the requirements of section 247(c)
11 applicable to intrastate transactions other than at the licensee's
12 business premises, (B) shall not apply to the loan or rental of a
13 firearm to any person for temporary use for lawful sporting
14 purposes, and (C) shall not preclude any person who is par-
15 ticipating in any organized rifle or shotgun match or contest,
16 or is engaged in hunting, in a State other than his State of resi-
17 dence and whose rifle or shotgun has been lost or stolen or has
18 become inoperative in such other State, from purchasing a rifle
19 or shotgun in such other State from a licensed dealer if such
20 person presents to such dealer a sworn statement (i) that his rifle
21 or shotgun was lost or stolen or became inoperative while par-
22 ticipating in such a match or contest, or while engaged in hunting,
23 in such other State, and (ii) identifying the chief law enforce-
24 ment officer of the locality in which such person resides, to whom
25 such licensed dealer shall forward such statement by registered
26 mail;

27 (4) to any person any destructive device, machinegun (as de-
28 fined in section 5845 of the Internal Revenue Code of 1954), short-
29 barreled shotgun, or short-barreled rifle, except as specifically
30 authorized by the Secretary consistent with public safety and
31 necessity; and

32 (5) any firearm or ammunition to any person unless the licensee
33 notes in his records required to be kept pursuant to section 248 of
34 this Act (15 U.S.C. —), the name, age, and place of residence
35 of such person if the person is an individual, or the identity and
36 principal and local places of business of such person if the person
37 is a corporation or other business entity.

38 Paragraphs (1), (2), (3), and (4) of this subsection shall not apply
39 to transactions between licensed importers, licensed manufacturers,
40 licensed dealers, and licensed collectors. Paragraph (4) of this subsec-

tion shall not apply to a sale or delivery to any research organization designated by the Secretary.

(c) In any case not otherwise prohibited by sections 246 to 251, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

“Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of sections 246 to 251 of the Criminal Code Reform Act of 1973 (15 U.S.C. to) from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

Signature ----- Date -----.”

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Postal Service regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or re-

1 jection of that notification shall be retained by the licensee as a part
2 of the records required to be kept under section 248(g) of this Act
3 (15 U.S.C.).

4 (c) It shall be unlawful for any licensed importer, licensed manu-
5 facturer, licensed dealer, or licensed collector to sell or otherwise dis-
6 pose of any firearm or ammunition to any person knowing or having
7 reasonable cause to believe that such person—

8 (1) is under indictment for, or has been convicted in any court
9 of, a crime punishable by imprisonment for a term exceeding one
10 year;

11 (2) is a fugitive from justice;

12 (3) is an unlawful user of or is addicted to marihuana or any
13 depressant or stimulant substance or narcotic drug as those terms
14 are defined in the Controlled Substances Act (21 U.S.C. 802); or

15 (4) has been adjudicated as a mental defective or has been
16 committed to any mental institution.

17 This subsection shall not apply with respect to the sale or disposition
18 of a firearm or ammunition to a licensed importer, licensed manufac-
19 turer, licensed dealer, or licensed collector who pursuant to subsection
20 (b) of section 249 of this Act (15 U.S.C.) is not precluded from
21 dealing in firearms or ammunition, or to a person who has been granted
22 relief from disabilities pursuant to subsection (c) of section 249.

23 (e) It shall be unlawful for any person knowingly to deliver or
24 cause to be delivered to any common or contract carrier for trans-
25 portation or shipment in interstate or foreign commerce, to persons
26 other than licensed importers, licensed manufacturers, licensed deal-
27 ers, or licensed collectors, any package or other container in which
28 there is any firearm or ammunition without written notice to the
29 carrier that such firearm or ammunition is being transported or
30 shipped; except that any passenger who owns or legally possesses a
31 firearm or ammunition being transported aboard any common or
32 contract carrier for movement with the passenger in interstate or
33 foreign commerce may deliver said firearm or ammunition into the
34 custody of the pilot, captain, conductor or operator of such common
35 or contract carrier for the duration of the trip without violating any
36 of the provisions of sections 246 to 251 of this Act.

37 (f) It shall be unlawful for any common or contract carrier to
38 transport or deliver in interstate or foreign commerce any firearm
39 or ammunition with knowledge or reasonable cause to believe that

1 the shipment, transportation, or receipt thereof would be in viola-
2 tion of the provisions of sections 246 to 251 of this Act.

3 (g) It shall be unlawful for any person—

4 (1) who is under indictment for, or who has been convicted in
5 any court of, a crime punishable by imprisonment for a term
6 exceeding one year;

7 (2) who is a fugitive from justice;

8 (3) who is an unlawful user of or is addicted to marihuana
9 or any depressant or stimulant substance or narcotic drug as
10 those terms are defined in the Controlled Substances Act (21
11 U.S.C. 802); or

12 (4) who has been adjudicated as a mental defective or who has
13 been committed to a mental institution;
14 to ship or transport any firearm or ammunition in interstate or foreign
15 commerce.

16 (h) It shall be unlawful for any person—

17 (1) who is under indictment for, or who has been convicted in
18 any court of, a crime punishable by imprisonment for a term ex-
19 ceeding one year;

20 (2) who is a fugitive from justice;

21 (3) who is an unlawful user of or is addicted to marihuana
22 or any depressant or stimulant substance or narcotic drug as those
23 terms are defined in the Controlled Substances Act (21 U.S.C.
24 802); or

25 (4) who has been adjudicated as a mental defective or who
26 has been committed to any mental institution;
27 to receive any firearm or ammunition which has been shipped or trans-
28 ported in interstate or foreign commerce.

29 (i) It shall be unlawful for any person to transport or ship in inter-
30 state or foreign commerce, any stolen firearms or stolen ammunition,
31 knowing or having reasonable cause to believe that the firearm or
32 ammunition was stolen.

33 (j) It shall be unlawful for any person to receive, conceal, store,
34 barter, sell, or dispose of any stolen firearm or stolen ammunition, or
35 pledge or accept as security for a loan any stolen firearm or stolen am-
36 munition, which is moving as, which is a part of, or which constitutes,
37 interstate or foreign commerce, knowing or having reasonable cause to
38 believe that the firearm or ammunition was stolen.

39 (k) It shall be unlawful for any person knowingly to transport,
40 ship, or receive, in interstate or foreign commerce, any firearm which

1 has had the importer's or manufacturer's serial number removed,
2 obliterated, or altered.

3 (1) Except as provided in section 249(d) of this Act, it shall be
4 unlawful for any person knowingly to import or bring into the United
5 States or any possession thereof any firearm or ammunition; and it
6 shall be unlawful for any person knowingly to receive any firearm or
7 ammunition which has been imported or brought into the United
8 States or any possession thereof in violation of the provisions of sec-
9 tions 246 to 251 of this Act.

10 (m) It shall be unlawful for any licensed importer, licensed manu-
11 facturer, licensed dealer, or licensed collector knowingly to make any
12 false entry in, to fail to make appropriate entry in, or to fail to prop-
13 erly maintain, any record which he is required to keep pursuant to
14 section 248 of this Act (15 U.S.C.) or regulations promulgated
15 thereunder.

16 LICENSING

17 SEC. 248. (a) No person shall engage in business as a firearms or
18 ammunition importer, manufacturer, or dealer until he has filed an
19 application with, and received a license to do so from, the Secretary.
20 The application shall be in such form and contain such information
21 as the Secretary shall by regulation prescribe. Each applicant shall
22 pay a fee for obtaining such a license, a separate fee being required
23 for each place in which the applicant is to do business, as follows:

24 (1) If the applicant is a manufacturer—

25 (A) of destructive devices or ammunition for destructive de-
26 vices, a fee of \$1,000 per year;

27 (B) of firearms other than destructive devices, a fee of \$50
28 per year; or

29 (C) of ammunition for firearms other than destructive de-
30 vices, a fee of \$10 per year.

31 (2) If the applicant is an importer—

32 (A) of destructive devices or ammunition for destructive de-
33 vices, a fee of \$1,000 per year; or

34 (B) of firearms other than destructive devices or ammunition
35 for firearms other than destructive devices, a fee of \$50 per year.

36 (3) If the applicant is a dealer—

37 (A) in destructive devices or ammunition for destructive de-
38 vices, a fee of \$1,000 per year;

39 (B) who is a pawnbroker dealing in firearms other than

1 destructive devices, or ammunition for firearms other than de-
2 structive devices, a fee of \$25 per year; or

3 (C) who is not a dealer in destructive devices or a pawnbroker,
4 a fee of \$10 per year.

5 (b) Any person desiring to be licensed as a collector shall file an
6 application for such license with the Secretary. The application shall
7 be in such form and contain such information as the Secretary shall
8 by regulation prescribe. The fee for such license shall be \$10 per year.
9 Any license granted under this subsection shall only apply to transac-
10 tions in curios and relics.

11 (c) Upon the filing of a proper application and payment of the
12 prescribed fee, the Secretary shall issue to a qualified applicant the
13 appropriate license which, subject to the provisions of sections 246 to
14 251 of this Act and other applicable provisions of law, shall entitle
15 the licensee to transport, ship, and receive firearms and ammunition
16 covered by such license in interstate or foreign commerce during the
17 period stated in the license.

18 (d) (1) Any application submitted under subsection (a) or (b) of
19 this section shall be approved if—

20 (A) the applicant is twenty-one years of age or over;

21 (B) the applicant (including, in the case of a corporation,
22 partnership, or association, any individual possessing, directly or
23 indirectly, the power to direct or cause the direction of the man-
24 agement and policies of the corporation, partnership, or associa-
25 tion) is not prohibited from transporting, shipping, or receiving
26 firearms or ammunition in interstate or foreign commerce under
27 sections 247 (g) and (h) of this Act;

28 (C) the applicant has not willfully violated any of the pro-
29 visions of sections 246 to 251 of this Act or regulations issued
30 thereunder;

31 (D) the applicant has not willfully failed to disclose any ma-
32 terial information required, or has not made any false statement
33 as to any material fact, in connection with his application; and

34 (E) the applicant has in a State (i) premises from which he
35 conducts business subject to license under sections 246 to 251 of
36 this Act or from which he intends to conduct such business within
37 a reasonable period of time, or (ii) in the case of a collector,
38 premises from which he conducts his collecting subject to license
39 under sections 246 to 251 of this Act or from which he intends
40 to conduct such collecting within a reasonable period of time.

(2) The Secretary must approve or deny an application for a license within the forty-five-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

(e) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has violated any provision of sections 246 to 251 of this Act or any rule or regulation prescribed by the Secretary under this chapter. The Secretary's action under this subsection may be reviewed only as provided in subsection (f) of this section.

(f)(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

(2) If the Secretary denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Secretary shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

(g) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, pro-

1 duction, shipment, receipt, sale, or other disposition, of firearms and
2 ammunition at such place, for such period, and in such form as the
3 Secretary may by regulations prescribe. Such importers, manufac-
4 turers, dealers, and collectors shall make such records available for
5 inspection at all reasonable times, and shall submit to the Secretary
6 such reports and information with respect to such records and the
7 contents thereof as he shall by regulations prescribe. The Secretary
8 may enter during business hours the premises (including places of
9 storage) of any firearms or ammunition importer, manufacturer,
10 dealer, or collector for the purpose of inspecting or examining (1)
11 any records or documents required to be kept by such importer, manu-
12 facturer, dealer, or collector under the provisions of sections 246 to
13 251 of this Act or regulations issued thereunder and (2) any firearms
14 or ammunition kept or stored by such importer, manufacturer, dealer,
15 or collector at such premises. Upon the request of any State or any
16 political subdivision thereof, the Secretary may make available to
17 such State or any political subdivision thereof, any information which
18 he may obtain by reason of the provisions of sections 246 to 251 with
19 respect to the identification of persons within such State or political
20 subdivision thereof, who have purchased or received firearms or am-
21 munition, together with a description of such firearms or ammunition.

22 (h) Licenses issued under the provisions of subsection (c) of this
23 section shall be kept posted and kept available for inspection on the
24 premises covered by the license.

25 (i) Licensed importers and licensed manufacturers shall identify
26 by means of a serial number engraved or cast on the receiver or frame
27 of the weapon, in such manner as the Secretary shall by regulations
28 prescribe, each firearm imported or manufactured by such importer
29 or manufacturer.

30 (j) This section shall not apply to anyone who engages only in
31 hand loading, reloading, or custom loading ammunition for his own
32 firearm, and who does not hand load, reload, or custom load ammu-
33 nition for others.

PENALTIES

35 SEC. 248A. Any person who violates section 247 or 248 of this Act
36 (15 U.S.C. or) shall be punished as provided in section 1812 of
37 title 18.

EXCEPTIONS: RELIEF FROM DISABILITIES

39 SEC. 249. (a) (1) The provisions of sections 246 to 251 of the Crim-
40 inal Code Reform Act of 1973 (15 U.S.C. to) shall not apply
41 with respect to the transportation, shipment, receipt, or importation of

1 any firearm or ammunition imported for, sold or shipped to, or issued
2 for the use of, the United States or any department or agency thereof
3 or any State or any department, agency, or political subdivision
4 thereof.

5 (2) The provisions of sections 246 to 251 shall not apply with respect
6 to (A) the shipment or receipt of firearms or ammunition when sold
7 or issued by the Secretary of the Army pursuant to section 4308 of title
8 10, and (B) the transportation of any such firearm or ammunition
9 carried out to enable a person, who lawfully received such firearm or
10 ammunition from the Secretary of the Army, to engage in military
11 training or in competitions.

12 (3) Unless otherwise prohibited by sections 246 to 251 of this Act
13 or any other Federal law, a licensed importer, licensed manufacturer,
14 or licensed dealer may ship to a member of the United States Armed
15 Forces on active duty outside the United States or to clubs, recognized
16 by the Department of Defense, whose entire membership is composed
17 of such members, and such members or clubs may receive a firearm or
18 ammunition determined by the Secretary of the Treasury to be gen-
19 erally recognized as particularly suitable for sporting purposes and
20 intended for the personal use of such member or club.

21 (4) When established to the satisfaction of the Secretary to be con-
22 sistent with the provisions of sections 246 to 251 of this Act and other
23 applicable Federal and State laws and published ordinances, the Sec-
24 retary may authorize the transportation, shipment, receipt, or impor-
25 tation into the United States to the place of residence of any member
26 of the United States Armed Forces who is on active duty outside the
27 United States (or who has been on active duty outside the United States
28 within the sixty day period immediately preceding the transportation,
29 shipment, receipt, or importation), of any firearm or ammunition
30 which is (A) determined by the Secretary to be generally recognized as
31 particularly suitable for sporting purposes, or determined by the De-
32 partment of Defense to be a type of firearm normally classified as a
33 war souvenir, and (B) intended for the personal use of such member.

34 (5) For the purpose of paragraphs (3) and (4) of this subsection,
35 the term "United States" means each of the several States and the
36 District of Columbia.

37 (b) A licensed importer, licensed manufacturer, licensed dealer, or
38 licensed collector who is indicted for a crime punishable by im-
39 prisonment for a term exceeding one year may, notwithstanding any
40 other provision of sections 246 to 251, continue operation pursuant to

1 his existing license (if prior to the expiration of the term of the exist-
2 ing license timely application is made for a new license) during the
3 term of such indictment and until any conviction pursuant to the indict-
4 ment becomes final.

5 (c) A person who has been convicted of a crime punishable by im-
6 prisonment for a term exceeding one year (other than a crime in-
7 volving the use of a firearm or other weapon or a violation of sections
8 246 to 251 of this Act or a violation of the National Firearms Act)
9 may make application to the Secretary for relief from the disabilities
10 imposed by Federal laws with respect to the acquisition, receipt, trans-
11 fer, shipment, or possession of firearms and incurred by reason of
12 such conviction, and the Secretary may grant such relief if it is estab-
13 lished to his satisfaction that the circumstances regarding the con-
14 viction, and the applicant's record and reputation, are such that the
15 applicant will not be likely to act in a manner dangerous to public
16 safety and that the granting of the relief would not be contrary to
17 the public interest. A licensed importer, licensed manufacturer, li-
18 censed dealer, or licensed collector conducting operations under sec-
19 tions 246 to 251 of this Act, who makes application for relief from the
20 disabilities incurred under those sections by reason of such a convic-
21 tion, shall not be barred by such conviction from further operations
22 under his license pending final action on an application for relief filed
23 pursuant to this section. Whenever the Secretary grants relief to any
24 person pursuant to this section he shall promptly publish in the Fed-
25 eral Register notice of such action, together with the reasons therefor.

26 (d) The Secretary may authorize a firearm or ammunition to be
27 imported or brought into the United States or any possession thereof
28 if the person importing or bringing in the firearm or ammunition
29 establishes to the satisfaction of the Secretary that the firearm or
30 ammunition—

31 (1) is being imported or brought in for scientific or research
32 purposes, or is for use in connection with competition or training
33 pursuant to chapter 401 of title 10;

34 (2) is an unserviceable firearm, other than a machinegun as
35 defined in section 5845(b) of the Internal Revenue Code of 1954
36 (not readily restorable to firing condition), imported or brought
37 in as a curio or museum piece;

38 (3) is of a type that does not fall within the definition of a
39 firearm as defined in section 5845(a) of the Internal Revenue Code
40 of 1954 and is generally recognized as particularly suitable for or

readily adaptable to sporting purposes, excluding surplus military firearms; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary may permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

RULES AND REGULATIONS

SEC. 250. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of sections 246 to 251 of the Criminal Code Reform Act of 1973 (15 U.S.C. to), including—

(1) regulations providing that a person licensed under sections 246 to 251, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license; and

(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under sections 246 to 251, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection.

The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

EFFECT ON STATE LAW

SEC. 251. No provision of sections 246 to 251 of this Act shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

CONGRESSIONAL FINDINGS AND DECLARATION

SEC. 252. The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

(1) a burden on commerce or threat affecting the free flow of commerce,

1 (2) a threat to the safety of the President of the United States
2 and Vice President of the United States,

3 (3) an impediment or a threat to the exercise of free speech and
4 the free exercise of a religion guaranteed by the first amendment
5 to the Constitution of the United States, and

6 (4) a threat to the continued and effective operation of the
7 Government of the United States and of the government of each
8 State guaranteed by article IV of the Constitution.

9 RECEIPT, POSSESSION, OR TRANSPORTATION OF FIREARMS

10 SEC. 253. (a) PERSONS LIABLE; PENALTIES FOR VIOLATIONS.—Any
11 person who—

12 (1) has been convicted by a court of the United States or of a
13 State or any political subdivision thereof of a felony, or

14 (2) has been discharged from the Armed Forces under dis-
15 honorably conditions, or

16 (3) has been adjudged by a court of the United States or of a
17 State or any political subdivision thereof of being mentally incom-
18 petent, or

19 (4) having been a citizen of the United States has renounced
20 his citizenship, or

21 (5) being an alien is illegally or unlawfully in the United
22 States,

23 and who receives, possesses, or transports any firearms shall be
24 punished as provided in section 1812 of title 18.

25 (b) EMPLOYMENT; PERSONS LIABLE; PENALTIES FOR VIOLATIONS.—
26 Any individual who to his knowledge and while being employed by
27 any person who—

28 (1) has been convicted by a court of the United States or of a
29 State or any political subdivision thereof of a felony, or

30 (2) has been discharged from the Armed Forces under dis-
31 honorably conditions, or

32 (3) has been adjudged by a court of the United States or of a
33 State or any political subdivision thereof of being mentally in-
34 competent, or

35 (4) having been a citizen of the United States has renounced his
36 citizenship, or

37 (5) being an alien is illegally or unlawfully in the United States,
38 and who, in the course of such employment, receives, possesses, or
39 transports any firearm shall be punished as provided in section 1812
40 of title 18.

(c) DEFINITIONS.—As used in sections 252 to 254 of the Criminal Code Reform Act of 1973 (15 U.S.C. to)—

(1) “felony” means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less;

(2) “firearm” means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term shall include any handgun, rifle, or shotgun;

(3) “destructive device” means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter;

(4) “handgun” means any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition, or any other firearm originally designed to be fired by the use of a single hand;

(5) “shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger; and

(6) “rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

EXEMPTIONS

SEC. 254. Sections 252 to 254 shall not apply to—

(1) any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison; and

(2) any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.

SEPARABILITY

SEC. 255. If any provision of sections 246 to 255 or the application thereof to any person or circumstances is held invalid, the remainder of the provisions and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

MISCELLANEOUS AMENDMENTS

SEC. 256.—TRANSPORTATION OR IMPORTATION OF PRISON-MADE GOODS.—(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, is guilty of a Class A misdemeanor.

(b) Sections 256 and 257 of the Criminal Code Reform Act of 1973 (15 U.S.C. and) shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a Federal, District of Columbia, or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State.

SEC. 257. MARKING PACKAGES.—(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

(b) Whoever violates this section shall be fined not more than \$1,000, and any goods, wares, or merchandise transported in violation of this section or section 256 of this Act (15 U.S.C.) shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

1 SEC. 258. TRANSPORTATION OF DENTURES.—Whoever transports by
2 mail or otherwise to or within the District of Columbia, the Canal
3 Zone or any possession of the United States or uses the mails or any
4 instrumentality of interstate commerce for the purpose of sending or
5 bringing into any State or Territory any set of artificial teeth or
6 prosthetic dental appliance or other denture, constructed from any
7 cast or impression made by any person other than, or without the
8 authorization or prescription of, a person licensed to practice dentistry
9 under the laws of the place into which such denture is sent or brought,
10 where such laws prohibit—

11 (1) the taking of impressions or casts of the human mouth or
12 teeth by a person not licensed under such laws to practice den-
13 tistry;

14 (2) the construction or supply of dentures by a person other
15 than, or without the authorization or prescription of a person
16 licensed under such laws to practice dentistry; or

17 (3) the construction or supply of dentures from impressions or
18 casts made by a person not licensed under such laws to practice
19 dentistry—

20 is guilty of a Class A misdemeanor.

21 SEC. 259. FALSE WEATHER REPORTS.—Whoever knowingly issues or
22 publishes any counterfeit weather forecast or warning of weather
23 conditions falsely representing such forecast or warning to have been
24 issued or published by the Weather Bureau, United States Signal
25 Service, or other branch of the Government service, is guilty of a Class
26 B misdemeanor, except that he shall not be sentenced to a term of
27 imprisonment longer than ninety days.

28 SEC. 260. TRANSPORTATION, SALE, OR RECEIPT OF PHONOGRAPH RECORDS
29 BEARING FORGED OR COUNTERFEIT LABELS.—Whoever knowingly and with
30 fraudulent intent transports, causes to be transported, receives, sells,
31 or offers for sale in interstate or foreign commerce any phonograph
32 record, disk, wire, tape, film, or other article on which sounds are
33 recorded, to which or upon which is stamped, pasted, or affixed any
34 forged or counterfeited label, knowing the label to have been falsely
35 made, forged, or counterfeited, is guilty of a Class A misdemeanor.

36 SEC. 261. Section 15 of the Act of June 6, 1934, as amended (48 Stat.
37 895, 15 U.S.C. 78o), is amended by deleting the words “section 1341,
38 1342, or 1343” in subsection (b) (5) (B) (iv) and inserting in lieu
39 thereof the words “section 1734”.

1 SEC. 262. Section 203 of the Act of August 22, 1940, as amended (54
2 Stat. 850, 15 U.S.C. 80b-3), is amended by deleting the words "section
3 1341, 1342, or 1343" in subsection (e) (2) and inserting in lieu thereof
4 the words "section 1734".

5 SEC. 263. Section 15 of the Act of June 29, 1948, as amended (62
6 Stat. 1074, 15 U.S.C. 714m), is amended by deleting the words "*Pro-*
7 *vided*, That such general penal statutes shall not apply to the extent
8 that they relate to crimes and offenses punishable under subsections
9 (a), (b), (c), and (d) of this section: *Provided further*, That sections
10 114 and 115 of the Act of March 4, 1909, as amended (18 U.S.C., 1940
11 edition, 204, 205)" in subsection (e) and inserting in lieu thereof the
12 words "*Provided*, That sections 9110 and 9111 of title 5, United States
13 Code".

14 SEC. 264. Section 5 of the Act of January 2, 1951 (64 Stat. 1135, 15
15 U.S.C. 1175), is amended by deleting the words "within Indian coun-
16 try as defined in section 1151 of title 18 of the United States Code or
17 within the special maritime and territorial jurisdiction of the United
18 States as defined in section 7 of title 18 of the United States Code" and
19 inserting in lieu thereof the words "within the special territorial juris-
20 diction of the United States, as defined in section 203(b) of title 18,
21 United States Code, and within the special maritime jurisdiction of
22 the United States, as defined in section 203(c) of title 18".

23 SEC. 265. Section 4 of the Act of June 30, 1953, as amended (67 Stat.
24 112, 15 U.S.C. 1193) is amended by deleting the words "section 1905 of
25 title 18" in subsection (c) and inserting in lieu thereof the words "sec-
26 tion 9301 of title 5".

27 SEC. 266. Section 3 of the Act of August 12, 1958 (72 Stat. 562, 15
28 U.S.C. 1243), is amended by deleting the words "within Indian coun-
29 try (as defined in section 1151 of title 18 of the United States Code),
30 or within the special maritime and territorial jurisdiction of the United
31 States (as defined in section 7 of title 18 of the United States Code),
32 and inserting in lieu thereof the words "within the special jurisdic-
33 tion of the United States, as defined in section 203(b) of title 18,
34 United States Code, or within the special maritime jurisdiction of the
35 United States, as defined in section 203(c) of title 18".

36 SEC. 267. Section 112 of the Act of September 9, 1966, as amended
37 (80 Stat. 725, 15 U.S.C. 1401), is amended by deleting the words "sec-
38 tion 1905 of title 18" in subsection (e) and inserting in lieu thereof
39 the words "section 9301 of title 5".

SEC. 268. Section 113 of the Act of September 9, 1966, as amended (80 Stat. 725, 15 U.S.C. 1402), is amended by deleting the words "section 1905 of title 18" in subsection (d) and inserting in lieu thereof the words "section 9301 of title 5".

HUNTING, FISHING, TRAPPING; DISTURBANCE OR INJURY ON WILDLIFE
REFUGES

IMPORTATION OR SHIPMENT OF INJURIOUS MAMMALS, BIRDS, FISH (INCLUDING MOLLUSKS AND CRUSTACEA), AMPHIBIA, AND REPTILES; PERMITS, SPECIMENS FOR MUSEUMS; REGULATIONS

1 (2) As used in this subsection, the term "wild" relates to any crea-
2 tures that, whether or not raised in captivity, normally are found in
3 a wild state; and the terms "wildlife" and "wildlife resources" include
4 those resources that comprise wild mammals, wild birds, fish (including
5 mollusks and crustacea), and all other classes of wild creatures what-
6 soever, and all types of aquatic and land vegetation upon which such
7 wildlife resources are dependent.

8 (3) Notwithstanding the foregoing, the Secretary of the Interior,
9 when he finds that there has been a proper showing of responsibility
10 and continued protection of the public interest and health, shall permit
11 the importation for zoological, educational, medical, and scientific
12 purposes of any mammals, birds, fish (including mollusks and crus-
13 tacea), amphibia, and reptiles, or the offspring or eggs thereof, where
14 such importation would be prohibited otherwise by or pursuant to this
15 section or section 271 of the Criminal Code Reform Act of 1973, and
16 these sections shall not restrict importations by Federal agencies for
17 their own use.

18 (4) Nothing in this subsection shall restrict the importation of dead
19 natural-history specimens for museums or for scientific collections, or
20 the importation of domesticated canaries, parrots (including all other
21 species of psittacine birds), or such other cage birds as the Secretary
22 of the Interior may designate.

23 (5) The Secretary of the Treasury and the Secretary of the Interior
24 shall enforce the provisions of this subsection, including any regula-
25 tions issued hereunder, and, if requested by the Secretary of the In-
26 terior, the Secretary of the Treasury may require the furnishing of
27 an appropriate bond when desirable to insure compliance with such
28 provisions.

29 (b) Whoever violates this section, or any regulation issued pursuant
30 thereto, is guilty of a Class B misdemeanor.

31 (c) The Secretary of the Treasury shall prescribe such requirements
32 and issue such permits as he may deem necessary for the transporta-
33 tion of wild animals and birds under humane and healthful conditions,
34 and it shall be unlawful for any person, including any importer,
35 knowingly to cause or permit any wild animal or bird to be transported
36 to the United States, or any Territory or district thereof, under inhu-
37 mane or unhealthful conditions or in violation of such requirements.
38 In any criminal prosecution for violation of this subsection and in
39 any administrative proceeding for the suspension of the issuance of
40 further permits—

(1) the condition of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and

(2) the presence in such vessel or conveyance at such time of a substantial ratio of dead, crippled, diseased, or starving wild animals or birds shall be deemed *prima facie* evidence of the violation of the provisions of this subsection.

TRANSPORTATION OF WILDLIFE TAKEN IN VIOLATION OF STATE, NATIONAL, OR
FOREIGN LAWS; RECIEPTS; MAKING FALSE REPORTS

SEC. 271. (a) Any person who—

(1) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold in interstate or foreign commerce any wildlife taken, transported, or sold in any manner in violation of any law or regulation of any State or foreign country; or

(b) Any person who—

(1) sells or causes to be sold any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) sells or causes to be sold in interstate or foreign commerce any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any law or regulation of a State or a foreign country, or

(3) having purchased or received wildlife imported from any foreign country or shipped, transported, or carried in interstate commerce, makes or causes to be made any false record, account, label, or identification thereof, or

(4) receives, acquires, or purchases for commercial or noncommercial purposes any wildlife—

(A) taken, transported, or sold in violation of any law or regulation of any State or foreign country and delivered,

1 carried, transported, or shipped by any means or method in
2 interstate or foreign commerce, or

3 (B) taken, transported, or sold in violation of any Act
4 of Congress or regulation issued thereunder, or

5 (5) imports from Mexico to any State, or exports from any
6 State to Mexico, any game mammal, dead or alive, or part or
7 product thereof, except under permit or other authorization of
8 the Secretary or, in accordance with any regulations prescribed by
9 him, having due regard to the requirements of the Migratory
10 Birds and Game Mammals Treaty with Mexico and the laws of the
11 United States forbidding importation of certain live mammals
12 injurious to agriculture and horticulture;

13 shall be subject to the penalties prescribed in subsections (c) and (d)
14 of this section.

15 (c) (1) Any person who knowingly violates, or who, in the exercise of
16 due care, should know that he is violating, any provision of subsection
17 (a) or (b) of this section may be assessed a civil penalty by the Secre-
18 tary of not more than \$5,000 for each such violation. Each violation
19 shall be a separate offense. No penalty shall be assessed unless such
20 person is given notice and opportunity for a hearing with respect to
21 such violation. Any such civil penalty may be compromised by the
22 Secretary. Upon any failure to pay the penalty assessed under this
23 paragraph, the Secretary may request the Attorney General to institute
24 a civil action in a district court of the United States for any district in
25 which such person is found or resides or transacts business to collect
26 the penalty and such court shall have jurisdiction to hear and decide
27 any such action. In hearing such action, the court shall have authority
28 to review the violation and the assessment of the civil penalty de novo.

29 (2) Any employee authorized by the Secretary to enforce the pro-
30 visions of this section, or any officer of the customs, shall have author-
31 ity to execute any warrant to search for and seize any wildlife, prod-
32 uct, property, or item used or possessed in violation of this section with
33 respect to which a civil penalty may be assessed pursuant to paragraph
34 (1) of this subsection. Such wildlife, product, property, or item so
35 seized shall be held by such employee pending disposition of proceed-
36 ings by the Secretary involving the assessment of a civil penalty pur-
37 suant to paragraph (1) of this subsection; except that the Secretary
38 may, in lieu of holding such wildlife, product, property, or item, per-
39 mit such person to post a bond or other surety satisfactory to the
40 Secretary. Upon the assessment of a civil penalty pursuant to para-

1 graph (1) of this subsection for any nonwillful violation of this sec-
2 tion, such wildlife, product, property, or item so seized may be pro-
3 ceeded against in any court of competent jurisdiction and forfeited to
4 the Secretary for disposition by him in such manner as he deems
5 appropriate. The owner or consignee of any such wildlife, product,
6 property, or item so seized shall, as soon as practicable following such
7 seizure, be notified of that fact in accordance with regulations estab-
8 lished by the Secretary or the Secretary of the Treasury. Whenever
9 any wildlife, product, property, or item is seized pursuant to this sub-
10 section, the Secretary shall move to dispose of the civil penalty pro-
11 ceedings pursuant to paragraph (1) of this subsection as expeditiously
12 as possible. If, with respect to any such wildlife, product, property,
13 or item so seized, no action is commenced in any court of competent
14 jurisdiction to obtain the forfeiture of such wildlife, product, prop-
15 erty, or item within thirty days following the disposition of proceed-
16 ings involving the assessment of a civil penalty, such wildlife, product,
17 property, or item shall be immediately returned to the owner
18 or the consignee in accordance with regulations promulgated by the
19 Secretary.

20 (d) Any person who knowingly and willfully violates any provi-
21 sion of subsection (a) or (b) of this section is guilty of a Class A
22 misdemeanor.

23 (e) Any wildlife or products thereof seized in connection with any
24 knowing and willful violation of this section with respect to which a
25 penalty may be imposed pursuant to subsection (d) shall, upon con-
26 viction of such violation, be forfeited to the Secretary to be disposed
27 of by him in such manner as he deems appropriate. Any other property
28 or item so seized may upon conviction, in the discretion of the court,
29 be forfeited to the United States or otherwise disposed of. The owner
30 or consignee of any such wildlife, product, property, or item so seized
31 shall, as soon as practicable following such seizure, be notified of that
32 fact in accordance with regulations established by the Secretary or
33 the Secretary of the Treasury. If no conviction results from any such
34 alleged violation, such wildlife, product, property or item so seized
35 in connection therewith shall be immediately returned to the owner or
36 consignee in accordance with regulations promulgated by the Secre-
37 tary, unless the Secretary, within thirty days following the final
38 disposition of the case involving such violation, commences proceed-
39 ings under subsection (c) of this section.

1 (f) For the purpose of this section, the term—

2 (1) "Secretary" means the Secretary of the Interior ;

3 (2) "person" means any individual, firm, corporation, associa-
4 tion, or partnership ;

5 (3) "wildlife" means any wild mammal, wild bird, amphibian,
6 reptile, mollusk, or crustacean, or any part, egg, or offspring there-
7 of, or the dead body or parts thereof, but does not include migra-
8 tory birds for which protection is afforded under the Migratory
9 Bird Treaty Act, as amended ;

10 (4) "State" means the several States, the District of Columbia,
11 the Commonwealth of Puerto Rico, American Samoa, the Virgin
12 Islands, and Guam ; and

13 (5) "taken" means captured, killed, collected, or otherwise
14 possessed.

15 MARKING PACKAGES OR CONTAINERS

16 SEC. 272. Whoever ships, transports, carries, brings or conveys in
17 interstate or foreign commerce any package containing any wild mam-
18 mal, wild bird, amphibian, or reptile, or any mollusk or crustacean,
19 or the dead body or parts or eggs thereof, without plainly marking,
20 labeling or tagging such package with the names and addresses of the
21 shipper and consignee and with an accurate statement showing the
22 contents by number and kind ; or

23 Whoever ships, transports, carries, brings or conveys in interstate
24 commerce, any package containing migratory birds included in any
25 convention to which the United States is a party, without making,
26 labeling, or tagging such package as prescribed in such convention,
27 or Act of Congress, or regulation thereunder ; or

28 Whoever ships, transports, carries, brings or conveys in interstate
29 commerce any package containing furs, hides, or skins of wild animals
30 without plainly marking, labeling, or tagging such package with the
31 names and addresses of the shipper and consignee—

32 Is guilty of a Class B misdemeanor ; and the shipment shall be for-
33 feited.

34 In any case where the marking, labeling, or tagging of a package
35 under this section indicating in any way the contents thereof would
36 create a significant possibility of theft of the package or its contents,
37 the Secretary of the Interior may, upon request of the owner thereof
38 or his agent or by regulation, provide some other reasonable means of
39 notifying appropriate authorities of the contents of such packages.

TRANSPORTATION OF WATER HYACINTHS

SEC. 273. (a) Whoever knowingly delivers or receives for transportation, or transports, in interstate commerce, alligator grass (*alternanthera philoxeroides*), or water chestnut plants (*trapa natans*) or water hyacinth plants (*eichhornia crassipes*) or the seeds of such grass or plants; or

(b) Whoever knowingly sells, purchases, barter, exchanges, gives, or receives any grass, plant, or seed which has been transported in violation of subsection (a); or

(c) Whoever knowingly delivers or receives for transportation, or transports, in interstate commerce, an advertisement, to sell, purchase, barter, exchange, give, or receive alligator grass or water chestnut plants or water hyacinth plants or the seeds of such grass or plants—

Is guilty of a Class B misdemeanor.

USE OF AIRCRAFT OR MOTOR VEHICLES TO HUNT CERTAIN WILD HORSES OR BURROS; POLLUTION OF WATERING HOLES

SEC. 274. (a) Whoever uses an aircraft or a motor vehicle to hunt, for the purpose of capturing or killing, any wild unbranded horse, mare, colt, or burro running at large on any of the public land or ranges is guilty of a Class B misdemeanor.

(b) Whoever pollutes or causes the pollution of any watering hole on any of the public land or ranges for the purpose of trapping, killing, wounding, or maiming any of the animals referred to in subsection (a) of this section is guilty of a Class B misdemeanor.

(c) As used in subsection (a) of this section—

(1) The term “aircraft” means any contrivance used for flight in the air; and

(2) The term “motor vehicle” includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land.

THE GOLDEN EAGLE INSIGNIA

SEC. 275. As used in this section, “The Golden Eagle Insignia” means the words “The Golden Eagle” and the representation of an American Golden Eagle (colored gold) and a family group (colored midnight blue) enclosed within a circle (colored white with a midnight blue border) framed by a rounded triangle (colored gold with a midnight blue border) which was originated by the Department of the Interior as the official symbol for Federal recreation fee areas.

Whoever, except as authorized under rules and regulations issued by the Secretary of the Interior, knowingly manufactures, reproduces, or uses “The Golden Eagle Insignia”, or any facsimile thereof, in

1 such a manner as is likely to cause confusion, or to cause mistake, or
2 to deceive, is guilty of a Class B misdemeanor.

3 The use of any such emblem, sign, insignia, or words which was
4 lawful on July 11, 1972, shall not be a violation of this section.

5 A violation of this section may be enjoined at the suit of the Attor-
6 ney General upon complaint by the Secretary of the Interior.

7 SEC. 276. Section 4 of the Act of September 28, 1962 (76 Stat. 654,
8 16 U.S.C. 460 k-3) is amended by deleting the words "a petty offense
9 (18 U.S.C. 1) with maximum penalties of imprisonment for not more
10 than six months, or a fine of not more than \$500, or both" and insert-
11 ing in lieu thereof the words "a Class B misdemeanor".

12 SEC. 277. Section 9 of the Act of October 8, 1964 (78 Stat. 1041, 16
13 U.S.C. 460 n-8) is amended by deleting the words "petty offenses as
14 defined in Title 18, section 1, United States Code: *Provided*, That any
15 person charged with a petty offense" and inserting in lieu thereof the
16 words "Class B misdemeanors: *Provided*, That any person charged
17 with a Class B misdemeanor".

18 SEC. 278. Section 2 of the Act of May 20, 1926, as amended (44 Stat.
19 576, 16 U.S.C. 852), is amended by deleting the words "section 10" and
20 inserting in lieu thereof the words "section 111".

21 AMENDMENTS RELATING TO CRIMES AND CRIMINAL PROCEDURE—

22 TITLE 18, UNITED STATES CODE

23 SEC. 279. (a) Chapter 201 of title 18, United States Code, is amended
24 as follows:

25 (1) The analysis of the chapter is amended by deleting "capital"
26 in the description of section 3005 and inserting in lieu thereof "treason
27 or Class A felony";

28 (2) Section 3005 is amended—

29 (A) by deleting the word "capital" in the heading and in-
30 serting in lieu thereof "treason or Class A felony"; and

31 (B) by deleting the words "other capital crime" in the first sen-
32 tence and inserting in lieu thereof "Class A felony"; and

33 (3) Section 3006A is amended—

34 (A) by deleting the words "misdemeanor (other than a petty
35 offense as defined in section 1 of this title)" in clause (1) of sub-
36 section (a) and in subsection (b) and inserting in lieu thereof
37 the words "Class A or Class B misdemeanor";

38 (B) by adding after the words "only misdemeanors" in the
39 first sentence of paragraph (2) of subsection (d) the words "or
40 infractions or both"; and

(C) by deleting the words “Act, other than subsection (h) of section 1” in subsection (I) and inserting in lieu thereof “section, other than subsection (h)”.

(b) Chapter 203 of title 18, United States Code, is amended as follows:

(1) Section 3042 is amended by deleting the word “country” wherever it appears and inserting in lieu thereof the word “place”;

(2) Section 3045 is amended by deleting the words “collector, or deputy collector of internal revenue”;

(3) Section 3050 is amended—

(A) by deleting the word “Prisons” wherever it appears and inserting in lieu thereof the word “Corrections”; and

(B) by deleting the reference to “sections 751, 752, 1791, or 1792” and inserting in lieu thereof “section 1314 (a) (1) or 1315”;

(4) Section 3052 is amended—

(A) by adding “(a)” before the words “The Director” at the beginning of the section; and

(B) by adding the following new subsections at the end thereof:

“(b) If Federal investigative or prosecutive jurisdiction is asserted for an offense under section 1601, 1602, 1603, 1611, 1612, 1613, 1614, 1616, 1618, 1621, 1622, or 1623, or concerning an attempt or conspiracy to violate any of those sections, if the victim of the offense is the President of the United States, the President-elect, the Vice President, the officer next in order of succession to the office of President of the United States, the Vice-President-elect, any individual who is acting as President under the Constitution and laws of the United States, or any individual who is a Member of Congress or a Member-of-Congress-elect, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

“(c) Offenses described in subsection (b) shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.”

(5) Section 3054 is amended—

(A) by deleting the words “sections 42, 43, and 44 of this title” and inserting in lieu thereof “sections 270 to 272 of the Criminal Code Reform Act of 1973 (16 U.S.C. to)”;

(B) by deleting the words “section 42 or 44” and inserting in

lieu thereof "section 270 or 272 of the Criminal Code Reform Act of 1973 (16 U.S.C.)"; and

(C) by deleting the words "section 43" and inserting in lieu thereof "section 271 of the Criminal Code Reform Act of 1973 (16 U.S.C.)";

(6) Section 3055 is repealed;

(7) Section 3056 is amended to read as follows:

"§ 3056. Secret Service powers

"Subject to the direction of the Secretary of the Treasury, the United States Secret Service, Treasury Department, is authorized to protect the person of the President of the United States, the members of his immediate family, the President-elect, the Vice President or other officer next in the order of succession to the office of President, and the Vice President-elect; protect the person of a former President and his spouse during his lifetime, the person of a widow or widower of a former President until his or her death or remarriage, and minor children of a former President until they reach sixteen years of age, unless such protection is declined; protect the person of a visiting head of a foreign government and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad; detect and arrest any person committing any offense against any of the following provisions of law:

"(a) section 1618;

"(b) section 1731 if there is jurisdiction under subsection (d) (1) (B) and the offense is a Class D felony as described in subsection (c) (1) (B) (iv);

"(c) section 1741 if there is jurisdiction under subsection (c) (2) (A) or (B);

"(d) section 1742 if there is jurisdiction under subsection (c) (1) (A) or (B);

"(e) section 1744 if there is jurisdiction under subsection (c) (2) (A) or (B);

"(f) sections 1343(d) (3), 1731(d) (1) (D), 1741(c) (2) (D), 1742(c) (2) (D), and 1751(c) (1), if the national credit institution is the Federal Deposit Insurance Corporation, a Federal land bank, a joint-stock land bank, or a Federal land bank association.

"(g) section 9112 of title 5; or

"(h) section 221, 223, 224, or 228 of the Criminal Code Reform Act of 1973 (12 U.S.C.

1 execute warrants issued under the authority of the United States;
2 carry firearms; offer and pay rewards for services or information
3 looking toward the apprehension of criminals; and perform such
4 other functions and duties as are authorized by law. In the perform-
5 ance of their duties under this section, the Director, Deputy Director,
6 Assistant Directors, Assistants to the Director, inspectors, and agents
7 of the Secret Service are authorized to make arrests without warrant
8 for any offense against the United States committed in their presence,
9 or for any felony cognizable under the laws of the United States if
10 they have reasonable grounds to believe that the person to be arrested
11 has committed or is committing such felony. Moneys expended from
12 Secret Service appropriations for the purchase of counterfeits and
13 subsequently recovered shall be reimbursed to the appropriation cur-
14 rent at the time of deposit.”;

15 (8) Section 3059 is amended—

16 (A) by inserting the designation “(a)” before the words “There
17 is authorized” at the beginning of the section; and

18 (B) by adding a new subsection (b) at the end thereof as
19 follows:

20 “(b) The Attorney General of the United States is authorized to
21 pay in his discretion an amount not to exceed \$100,000 for information
22 and services concerning a violation of section 1601, 1602, 1603, 1611,
23 1612, 1613, 1614, 1616, 1618, 1621, 1622, or 1623, or concerning an
24 attempt or conspiracy to violate any of those sections, if the victim
25 of the offense is the President of the United States, the President-
26 elect, the Vice President, or, if there is no Vice President, the officer
27 next in order of succession to the office of President of the United
28 States, the Vice-President-elect, or any individual who is acting as
29 President under the Constitution and laws of the United States. Any
30 officer or employee of the United States or of any State or local gov-
31 ernment who furnishes information or renders service in the per-
32 formance of his official duties shall not be eligible for payment under
33 this subsection.”; and

34 (9) The analysis of the chapter is amended by deleting the word
35 “Prisons” from the item relating to section 3050 and inserting the
36 word “Corrections” in lieu thereof, and by amending the item relating
37 to section 3055 to read:

“3055. Repealed.”

38 (c) Chapter 205 of title 18, United States Code, is amended as
39 follows:

(1) Section 3103a is amended by deleting the words "section 3103 of this title" and inserting in lieu thereof the words "Rule 41 of the Federal Rules of Criminal Procedure";

(2) Section 3112 is amended—

(A) by deleting the words "Sections 42, 43, and 44 of this title" and inserting in lieu thereof "sections 270 to 272 of the Criminal Code Reform Act of 1973 (12 U.S.C. to)";

(B) by deleting the words "section 42 or 44" and inserting in lieu thereof the words "section 270 or 272 of the Criminal Code Reform Act of 1973 (12 U.S.C. or)"; and

(C) by deleting the words "section 43" and inserting in lieu thereof the words "section 271 of the Criminal Code Reform Act of 1973 (12 U.S.C.)";

(3) Section 3113 is repealed; and

(4) The analysis at the beginning of the chapter is amended by amending the item relating to section 3113 to read:

"3113. Repealed."

(d)(1) Title 18 of the United States Code is amended by adding after chapter 205 the following new chapter:

**"Chapter 206.—WIRE INTERCEPTION AND INTERCEPTION
OF ORAL COMMUNICATIONS**

"Sec.

"3125. Definitions.

"3126. Exception to applicability.

"3127. Authorization for interception of wire or oral communications.

"3128. Authorization for disclosure and use of intercepted wire or oral communications.

"3129. Procedure for interception of wire or oral communications.

"3130. Reports concerning intercepted wire or oral communications.

"3131. Recovery of civil damages authorized.

"§ 3125. Definitions

As used in this chapter—

"(a) 'aggrieved person' means a party to an intercepted wire or oral communication or a person against whom the interception is directed;

"(b) 'communications common carrier' has the meaning set forth for the term 'common carrier' in section 3 of the Act of June 19, 1934, as amended (47 U.S.C. 153(h));

"(c) 'contents' includes information, obtained from a communication, which concerns the existence, substance, purport, or

1 meaning of the communication, or the identity of a party to the
2 communication;

3 “(d) ‘electronic, mechanical, or other device’ means any de-
4 vice or apparatus which can be used to intercept a wire or oral
5 communication, other than:

6 “(1) a telephone or telegraph instrument, equipment, or
7 facility, or any component thereof:

8 “(A) furnished to the subscriber or user by a com-
9 munications common carrier in the usual course of its
10 business and being used by the subscriber or user in the
11 usual course of its business; or

12 “(B) being used by a communications common car-
13 rier in the usual course of its business or by an inves-
14 tigative or law enforcement officer in the course of his
15 official duties; or

16 “(2) a hearing aid or similar device being used to cor-
17 rect subnormal hearing to not better than normal hearing;

18 “(e) ‘intercept’ means to acquire the contents of a wire or oral
19 communication;

20 “(f) ‘judge of competent jurisdiction’ means:

21 “(1) a judge of a United States district court or a United
22 State court of appeals; or

23 “(2) a judge of any court of general criminal juris-
24 diction of a State who is authorized by a statute of that
25 State to enter orders authorizing interceptions of wire or
26 oral communications;

27 “(g) ‘oral communication’ means speech uttered by a person
28 exhibiting an expectation that such speech is not subject to over-
29 hearing, under circumstances reasonably justifying that expect-
30 ation;

31 “(h) ‘wire communication’ means a communication made in
32 whole or in part through the use of a facility for the transmis-
33 sion of a communication by the aid of wire, cable, or other
34 similar connection between the point of origin and the point
35 of reception, furnished or operated by any person engaged as a
36 communications common carrier in providing or operating such
37 a facility for the transmission of interstate or foreign com-
38 munications.

1 **“§ 3126. Exception to applicability**

2 “Nothing contained in this chapter, in section 1532 or 1533 of this
3 title, or in section 605 of the Communications Act of 1934 (48 Stat.
4 1143; 47 U.S.C. 605) shall limit the constitutional power of the Presi-
5 dent to take such measures as he deems necessary to protect the Nation
6 against actual or potential attack or other hostile acts of a foreign
7 power, to obtain foreign intelligence information deemed essential to
8 the security of the United States, or to protect national security in-
9 formation against foreign intelligence activities. Nor shall anything
10 in this chapter or in section 1532 or 1533 be deemed to limit the con-
11 stitutional power of the President to take such measures as he deems
12 necessary to protect the United States against the overthrow of the
13 Government by force or other unlawful means, or against any other
14 clear and present danger to the structure or existence of the Govern-
15 ment. The contents of any wire or oral communication intercepted by
16 authority of the President in the exercise of the foregoing powers may
17 be received in evidence in any trial hearing, or other proceeding only
18 where such interception was reasonable, and shall not otherwise be
19 used or disclosed except as is necessary to implement that power.

20 **“§ 3127. Authorization for interception of wire or oral com-**
21 **munications**

22 “(a) The Attorney General, or any Assistant Attorney General
23 specially designated by the Attorney General, may authorize an appli-
24 cation to a Federal judge of competent jurisdiction for, and such judge
25 may grant in conformity with section 3129 an order authorizing or
26 approving the interception of wire or oral communications by the Fed-
27 eral Bureau of Investigation, or a Federal agency having respon-
28 sibility for the investigation of the offense as to which the application
29 is made, when such interception may provide or has provided evidence
30 of—

31 “(1) any felony punishable under section 1101 (treason), sec-
32 tion 1102 (armed rebellion or insurrection), section 1103 (inciting
33 overthrow or destruction of the government), section 1104 (para-
34 military political activities), section 1111 (sabotage), section 1112
35 (impairing military effectiveness), section 1114 (impairing mili-
36 tary effectiveness by false statement), section 1117 (inciting or
37 aiding mutiny, insubordination, or desertion), section 1121 (es-
38 pionage), section 1122 (disclosing national defense information),
39 section 1123 (mishandling national defense information), section
40 1124 (disclosing classified information), section 1125 (unlawful-

1 ly obtaining classified information), section 1127 (failing to
2 register as a person trained in a foreign espionage system), sec-
3 tion 1131 (offenses relating to atomic energy), section 1203 (en-
4 tering or recruiting for a foreign armed force), section 1302
5 (obstructing a government function by physical interference), sec-
6 tion 1311 (hindering law enforcement), section 1801 (inciting or
7 leading a riot), section 1802 (arming a rioter), or section 1803
8 (engaging in a riot) ;

9 “(2) any offense which involves murder, kidnapping, robbery,
10 or extortion and which is punishable under this title;

11 “(3) any offense punishable under section 1301 (obstructing a
12 government function by fraud), section 1321 (witness bribery),
13 section 1322 (corrupting a witness or an informant), section 1323
14 (tampering with a witness or an informant), section 1324 (re-
15 taliating against a witness or an informant), section 1325 (tam-
16 pering with physical evidence), section 1351 (bribery), section
17 1352 (graft), section 1357 (tampering with a public servant),
18 section 1358 (retaliating against a public servant) if the offense
19 involves explosives, section 1701 (arson) where there is jurisdic-
20 tion of the offense under subsection (c) (5) or (6), section 1702
21 (aggravated property destruction) where there is jurisdiction of
22 the offense under section 1701(c) (5) or (6), section 1721 (rob-
23 bery) where there is jurisdiction under subsection (c) (5) or (6),
24 section 1722 (extortion), section 1723 (criminal coercion), section
25 1724 (loansharking), section 1731 (theft) where there is jurisdic-
26 tion under subsection (d) (2) (B), (C), (H), (I), (J, (O) or
27 (R), section 1732 (receiving stolen property) where there is
28 jurisdiction under section 1731 (d) (2) (B) or (C), section 1752
29 (labor bribery), section 1753 (sports bribery), section 1811 (ex-
30 plosives violations), section 1813 (using or possessing a weapon in
31 the course of a crime) if the offense involves explosives, section
32 1831 (engaging in a gambling business), section 1832 (facilitat-
33 ing or profiting from gambling), section 1841 (conducting a
34 prostitution business), section 1861 (racketeering), section 1862
35 (leading a continuing criminal syndicate) ; or section 1863 (fa-
36 cilitating an organized crime activity by violence) ;

37 “(4) any offense punishable under section 1601, 1602, 1603, 1611,
38 1612, 1613, 1614, 1616, 1618, 1621, 1622, or 1623, or an attempt or
39 conspiracy to violate any of those sections, if the victim of the
40 offense is the President of the United States, the President-elect,

1 the Vice President, or, if there is no Vice President, the officer
2 next in order of succession to the office of President of the United
3 States, the Vice-President-elect, any individual who is acting as
4 President under the Constitution and laws of the United States,
5 or any individual who is a Member of Congress or a Member-of-
6 Congress-elect;

7 “(5) any Class C felony punishable under section 1741 (coun-
8 terfeiting and forgery) or any offense punishable under section
9 1743 (trafficking in a counterfeiting implement);

10 “(6) any offense punishable under section 1821 (trafficking in
11 heroin or morphine) or section 1822 (trafficking in drugs); or

12 “(7) any conspiracy to commit any of the foregoing offenses.

13 “(b) The principal prosecuting attorney of any State, or the princi-
14 pal prosecuting attorney of any political subdivision thereof, if such
15 attorney is authorized by a statute of that State to make application
16 to a State court judge of competent jurisdiction for an order authoriz-
17 ing or approving the interception of wire or oral communications, may
18 apply to such judge for, and such judge may grant in conformity with
19 section 3129 of this chapter and with the applicable State statute an
20 order authorizing, or approving the interception of wire or oral com-
21 munications by investigative or law enforcement officers having re-
22 sponsibility for the investigation of the offense as to which the appli-
23 cation is made, when such interception may provide or has provided
24 evidence of the commission of the offense of murder, kidnapping,
25 gambling, robbery, bribery, extortion, or dealing in narcotic drugs,
26 marihuana or other dangerous drugs, or other crime dangerous to
27 life, limb, or property, and punishable by imprisonment for more than
28 one year, designated in any applicable State statute authorizing such
29 interception, or any conspiracy to commit any of the foregoing offenses.

30 **“§ 3128. Authorization for disclosure and use of intercepted wire**
31 **or oral communications**

32 “(a) Any law enforcement officer who, by any means authorized
33 by this chapter, has obtained knowledge of the contents of any wire
34 or oral communication, or evidence derived therefrom, may disclose
35 such contents to another law enforcement officer to the extent that
36 such disclosure is appropriate to the proper performance of the official
37 duties of the officer making or receiving the disclosure.

38 “(b) Any law enforcement officer who, by any means authorized by
39 this chapter, has obtained knowledge of the contents of any wire or
40 oral communication or evidence derived therefrom may use such con-

1 tents to the extent such use is appropriate to the proper performance
2 of his official duties.

3 “(c) Any person who has received, by any means authorized by
4 this chapter, any information concerning a wire or oral communica-
5 tion, or evidence derived therefrom intercepted in accordance with
6 the provisions of this chapter may disclose the contents of that com-
7 munication or such derivative evidence while giving testimony under
8 oath or affirmation in any proceeding held under the authority of
9 the United States or of any State or political subdivision thereof.

10 “(d) No otherwise privileged wire or oral communication inter-
11 cepted in accordance with, or in violation of, the provisions of this
12 chapter shall lose its privileged character.

13 “(e) When a law enforcement officer, while engaged in intercepting
14 wire or oral communications in the manner authorized herein, inter-
15 cepts wire or oral communications relating to offenses other than those
16 specified in the order of authorization or approval, the contents there-
17 of, and evidence derived therefrom, may be disclosed or used as pro-
18 vided in subsections (a) and (b) of this section. Such contents and
19 any evidence derived therefrom may be used under subsection (c) of
20 this section when authorized or approved by a judge of competent
21 jurisdiction where such judge finds on subsequent application that the
22 contents were otherwise intercepted in accordance with the provisions
23 of this chapter. Such application shall be made as soon as practicable.

24 **“§ 3129. Procedure for interception of wire or oral communica-**
25 **tions**

26 “(a) Each application for an order authorizing or approving the
27 interception of a wire or oral communication shall be made in writing
28 upon oath or affirmation to a judge of competent jurisdiction and shall
29 state the applicant’s authority to make such application. Each appli-
30 cation shall include the following information :

31 “(1) the identity of the law enforcement officer making the
32 application, and the officer authorizing the application ;

33 “(2) a full and complete statement of the facts and circum-
34 stances relied upon by the applicant, to justify his belief that an
35 order should be issued, including (A) details as to the particular
36 offense that has been, is being, or is about to be committed, (B) a
37 particular description of the nature and location of the facilities
38 from which or the place where the communication is to be inter-
39 cepted, (C) a particular description of the type of communications
40 sought to be intercepted, (D) the identity of the person, if known,

1 committing the offense and whose communications are to be
2 intercepted;

3 “(3) a full and complete statement as to whether or not other
4 investigative procedures have been tried and failed or why they
5 reasonably appear to be unlikely to succeed if tried or to be too
6 dangerous;

7 “(4) a statement of the period of time for which the intercep-
8 tion is required to be maintained. If the nature of the investigation
9 is such that the authorization for interception should not auto-
10 matically terminate when the described type of communication
11 has been first obtained, a particular description of facts establish-
12 ing probable cause to believe that additional communications of
13 the same type will occur thereafter;

14 “(5) a full and complete statement of the facts concerning all
15 previous applications known to the individual authorizing and
16 making the application, made to any judge for authorization to
17 intercept, or for approval of interceptions of, wire or oral com-
18 munications involving any of the same persons, facilities or places
19 specified in the application, and the action taken by the judge on
20 each such application; and

21 “(6) where the application is for the extension of an order,
22 a statement setting forth the results thus far obtained from the
23 interception, or a reasonable explanation of the failure to obtain
24 such results.

25 “(b) The judge may require the applicant to furnish additional
26 testimony or documentary evidence in support of the application.

27 “(c) Upon such application the judge may enter an ex parte order,
28 as requested or as modified, authorizing or approving interception of
29 wire or oral communications within the territorial jurisdiction of the
30 court in which the judge is sitting, if the judge determines on the
31 basis of the facts submitted by the applicant that—

32 “(1) there is probable cause for belief that an individual is
33 committing, has committed, or is about to commit a particular
34 offense enumerated in section 3127 of this chapter;

35 “(2) there is probable cause for belief that particular com-
36 munications concerning that offense will be obtained through
37 such interception;

38 “(3) normal investigative procedures have been tried and have
39 failed or reasonably appear to be unlikely to succeed if tried or
40 to be too dangerous; and

1 “(4) there is probable cause for belief that the facilities from
2 which, or the place where, the wire or oral communications are
3 to be intercepted are being used, or are about to be used in con-
4 nection with the commission of such offense, or are leased to,
5 listed in the name of, or commonly used by such person.

6 “(d) Each order authorizing or approving the interception of any
7 wire or oral communication shall specify—

8 “(1) the identity of the person, if known, whose communica-
9 tions are to be intercepted;

10 “(2) the nature and location of the communications facilities
11 as to which, or the place where, authority to intercept is granted;

12 “(3) a particular description of the type of communication
13 sought to be intercepted, and a statement of the particular offense
14 to which it relates;

15 “(4) the identity of the agency authorized to intercept the com-
16 munications, and of the person authorizing the application; and

17 “(5) the period of time during which such interception is au-
18 thorized, including a statement as to whether or not the inter-
19 ception shall automatically terminate when the described com-
20 munication has been first obtained.

21 An order authorizing the interception of a wire or oral communication
22 shall, upon request of the applicant, direct that a communications
23 common carrier, landlord, custodian or other person shall furnish
24 the applicant forthwith all information, facilities, and technical
25 assistance necessary to accomplish the interception unobtrusively and
26 with a minimum of interference with the services that such carrier,
27 landlord, custodian, or person is according the person whose com-
28 munications are to be intercepted. Any communications common
29 carrier, landlord, custodian or other person furnishing such facilities
30 or technical assistance shall be compensated therefor by the applicant
31 at the prevailing rates.

32 “(e) No order entered under this section may authorize or approve
33 the interception of any wire or oral communication for any period
34 longer than is necessary to achieve the objective of the authorization,
35 nor in any event longer than thirty days. Extensions of an order may
36 be granted, but only upon application for an extension made in accord-
37 ance with subsection (a) of this section and the court making the
38 findings required by subsection (c) of this section. The period of exten-
39 sion shall be no longer than the authorizing judge deems necessary
40 to achieve the purposes for which it was granted and in no event for

1 longer than thirty days. Every order and extension thereof shall
2 contain a provision that the authorization to intercept shall be executed
3 as soon as practicable, shall be conducted in such a way as to mini-
4 mize the interception of communications not otherwise subject to
5 interception under this chapter, and must terminate upon attain-
6 ment of the authorized objective, or in any event in thirty days.

7 “(f) Whenever an order authorizing interception is entered pur-
8 suant to this chapter, the order may require reports to be made to the
9 judge who issued the order showing what progress has been made to-
10 ward achievement of the authorized objective and the need for con-
11 tinued interception. Such reports shall be made at such intervals as
12 the judge may require.

13 “(g) Notwithstanding any other provision of this chapter, any law
14 enforcement officer, specially designated by the Attorney General or by
15 the principal prosecuting attorney of any State or subdivision thereof
16 acting pursuant to a statute of that State, who reasonably determines
17 that—

18 “(1) an emergency situation exists with respect to conspira-
19 torial activities characteristic of organized crime that requires a
20 wire or oral communication to be intercepted before an order au-
21 thorizing such interception can with due diligence be obtained,
22 and

23 “(2) there are grounds upon which an order could be entered
24 under this chapter to authorize such interception,
25 may intercept such wire or oral communication if an application
26 for an order approving the interception is made in accordance with
27 this section within forty-eight hours after the interception has oc-
28 curred, or begins to occur. In the absence of an order, such interception
29 shall immediately terminate when the communication sought is ob-
30 tained or when the application for the order is denied, whichever is
31 earlier. In the event such application for approval is denied, or in
32 any other case where the interception is terminated without an order
33 having been issued, the contents of any wire or oral communication
34 intercepted shall be treated as having been obtained in violation of
35 this chapter, and an inventory shall be served as provided for in
36 subsection (h) (4) of this section on the person named in the appli-
37 cation.

38 “(h) (1) The contents of any wire or oral communication inter-
39 cepted by any means authorized by this chapter shall, if possible, be
40 recorded on tape or wire or other comparable device. The recording

1 of the contents of any wire or oral communication under this sub-
2 section shall be done in such way as will protect the recording from
3 editing or other alterations. Immediately upon the expiration of the
4 period of the order, or extensions thereof, such recordings shall be
5 made available to the judge issuing such order and sealed under his
6 directions. Custody of the recordings shall be wherever the judge
7 orders. They shall not be destroyed except upon an order of the issuing
8 or denying judge and in any event shall be kept for ten years. Duplicate
9 recordings may be made for use or disclosure pursuant to the provi-
10 sions of subsections (a) and (b) of section 3128 of this chapter for
11 investigations. The presence of the seal provided for by this subsec-
12 tion, or a satisfactory explanation for the absence thereof, shall be a
13 prerequisite for the use or disclosure of the contents of any wire or
14 oral communication of evidence derived there from under subsection
15 (c) of section 3128.

16 “(2) Applications made and orders granted under this chapter
17 shall be sealed by the judge. Custody of the applications and orders
18 shall be wherever the judge directs. Such applications and orders shall
19 be disclosed only upon a showing of good cause before a judge of
20 competent jurisdiction and shall not be destroyed except on order of
21 the issuing or denying judge, and in any event shall be kept for ten
22 years.

23 “(3) Any violation of the provisions of this subsection may be
24 punished as contempt of the issuing or denying judge under section
25 1331.

26 “(4) Within a reasonable time but not later than ninety days after
27 the filing of an application for an order of approval under section
28 3129(g) which is denied or the termination of the period of an order
29 or extensions thereof, the issuing or denying judge shall cause to be
30 served, on the persons named in the order or the application, and such
31 other parties to intercepted communications as the judge may deter-
32 mine in his discretion that is in the interest of justice, an inventory
33 which shall include notice of—

34 “(A) the fact of the entry of the order or the application;

35 “(B) the date of the entry and the period of authorized,
36 approved or disapproved interception, or the denial of the appli-
37 cation; and

38 “(C) the fact that during the period wire or oral communica-
39 tions were or were not intercepted.

40 The judge, upon the filing of a motion, may in his discretion make

1 available to such person or his counsel for inspection such portions of
2 the intercepted communications, applications and orders as the judge
3 determines to be in the interest of justice. On an ex parte showing of
4 good cause to a judge of competent jurisdiction the serving of the
5 inventory required by this subsection may be postponed.

6 “(i) The contents of any intercepted wire or oral communication or
7 evidence derived therefrom shall not be received in evidence or other-
8 wise disclosed in any trial, hearing, or other proceeding in a Federal
9 or State court unless each party, not less than ten days before the trial,
10 hearing, or proceeding, has been furnished with a copy of the court
11 order, and accompanying application, under which the interception
12 was authorized or approved. This ten-day period may be waived by the
13 judge if he finds that it was not possible to furnish the party with the
14 above information ten days before the trial, hearing, or proceeding and
15 that the party will not be prejudiced by the delay in receiving such
16 information.

17 “(j) (1) Any aggrieved person in any trial, hearing, or proceeding in
18 or before any court, department, officer, agency, regulatory body, or
19 other authority of the United States, a State, or a political subdivision
20 thereof, may move to suppress the contents of any intercepted wire
21 or oral communication, or evidence derived therefrom, on the grounds
22 that—

23 “(A) the communication was unlawfully intercepted;

24 “(B) the order of authorization or approval under which
25 it was intercepted is insufficient on its face; or

26 “(C) the interception was not made in conformity with the
27 order of authorization or approval.

28 Such motion shall be made before the trial, hearing, or proceeding
29 unless there was no opportunity to make such motion or the person was
30 not aware of the grounds of the motion. If the motion is granted, the
31 contents of the intercepted wire or oral communication, or evidence
32 derived therefrom, shall be treated as having been obtained in viola-
33 tion of this chapter. The judge, upon the filing of such motion by the
34 aggrieved person, may in his discretion make available to the aggrieved
35 person or his counsel for inspection such portions of the intercepted
36 communication or evidence derived therefrom as the judge determines
37 to be in the interests of justice.

38 “(2) In addition to any other right to appeal, the United States
39 shall have the right to appeal from an order granting a motion
40 to suppress made under paragraph (1) of this subsection, or the

denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

§ 3130. Reports concerning intercepted wire or oral communications

“(a) Within thirty days after the expiration of an order (or each extension thereof) entered under section 3129, or the denial of an order approving an interception, the issuing or denying judge shall report to the Administrative Office of the United States Courts—

“(1) the fact that an order or extension was applied for;

“(2) the kind of order or extension applied for;

“(3) the fact that the order or extension was granted as applied for, was modified, or was denied;

“(4) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

“(5) the offense specified in the order or application, or extension of an order;

“(6) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

“(7) the nature of the facilities from which or the place where communications were to be intercepted.

“(b) In January of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts—

“(1) the information required by paragraphs (1) through (7) of subsection (a) of this section with respect to each application for an order or extension made during the preceding calendar year;

“(2) a general description of the interceptions made under such order or extension, including (A) the approximate nature and frequency of incriminating communications intercepted, (B) the approximate nature and frequency of other communications intercepted, (C) the approximate number of persons whose communications were intercepted, and (D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

1 “(3) the number of arrests resulting from interceptions made
2 under such order or extension, and the offenses for which arrests
3 were made;

4 “(4) the number of trials resulting from such interceptions;

5 “(5) the number of motions to suppress made with respect to
6 such interceptions, and the number granted or denied;

7 “(6) the number of convictions resulting from such intercep-
8 tions and the offenses for which the convictions were obtained
9 and a general assessment of the importance of the interceptions;
10 and

11 “(7) the information required by paragraphs (2) through (6)
12 of this subsection with respect to orders or extensions obtained in
13 a preceding calendar year.

14 “(c) In April of each year the Director of the Administrative Of-
15 fice of the United States Courts shall transmit to the Congress a full
16 and complete report concerning the number of applications for orders
17 authorizing or approving the interception of wire or oral communica-
18 tions and the number of orders and extensions granted or denied dur-
19 ing the preceding calendar year. Such report shall include a summary
20 and analysis of the data required to be filed with the Administrative
21 Office by subsections (a) and (b) of this section. The Director of the
22 Administrative Office of the United States Courts is authorized to
23 issue binding regulations dealing with the content and form of the
24 reports required to be filed by subsections (a) and (b) of this section.

25 **“§ 3131. Recovery of civil damages authorized**

26 “Any person whose wire or oral communication is intercepted, dis-
27 closed, or used in violation of this chapter shall (a) have a civil cause
28 of action against any person who intercepts, discloses, or uses, or pro-
29 cures any other person to intercept, disclose, or use such communica-
30 tions, and (b) be entitled to recover from any such person—

31 “(1) actual damages but not less than liquidated damages com-
32 puted at the rate of \$100 a day for each day of violation or \$1,000,
33 whichever is higher;

34 “(2) punitive damages; and

35 “(3) a reasonable attorney’s fee and other litigation costs rea-
36 sonably incurred.

37 A good faith reliance on a court order or legislative authorization shall
38 constitute a complete defense to any civil or criminal action brought
39 under this chapter or under any other law.”; and

1 (2) The analysis at the beginning of redesignated Part IV of title 18,
 2 United States Code, is amended by adding after the item for chapter
 3 205 the following new item:

"206. Wire interception and interception of oral communications----- 3125".

4 (e) Chapter 207 of title 18, United States Code, is amended as
 5 follows:

6 (1) Section 3141 is amended by deleting the words "an offense
 7 punishable by death" and inserting in lieu thereof the words "a Class
 8 A felony";

9 (2) Section 3146 is amended by deleting the words "an offense pun-
 10 ishable by death" in the first sentence of subsection (a) and inserting
 11 in lieu thereof "a Class A felony";

12 (3) Section 3148 is amended by deleting the words "an offense
 13 punishable by death" in clause (1) and inserting in lieu thereof the
 14 words "a Class A felony";

15 (4) Section 3150 is amended to read as follows:

16 **"§ 3150. Forfeiture of security for failure to appear**

17 "A person who violates section 1313 shall, subject to the provisions
 18 of the Federal Rules of Criminal Procedure, incur a forfeiture of any
 19 security which was given or pledged for his release.";

20 (5) Section 3152 is amended to read as follows:

21 **"§ 3152. Definition**

22 "As used in sections 3146-3150, the term 'judicial officer' means, un-
 23 less otherwise indicated, any person or court authorized pursuant to
 24 section 3041, or the Federal Rules of Criminal Procedure, to bail or
 25 otherwise release a person before trial or sentencing in a court of the
 26 United States.";

27 (6) A new section 3153 is added at the end of the chapter as follows:

28 **"§ 3153. Applicability of chapter**

29 "This chapter does not apply to an offense triable by court-martial,
 30 military commission, provost court, or other military tribunal; and it
 31 does not apply in the District of Columbia."; and

32 (7) The analysis of the chapter is amended—

33 (A) by deleting

"3150. Penalties for failure to appear."

34 and inserting in lieu thereof

"3150. Forfeiture of security for failure to appear.";

35 (B) by deleting

"3152. Definitions."

36 and inserting in lieu thereof

"3152. Definition.";

1 and

2 (C) by adding at the end thereof the following new item:

"§ 3153. Applicability of chapter."

3 (f) Chapter 209 of title 18, United States Code, is amended as
4 follows:

5 (1) Section 3182 is amended by deleting the word "crime" and
6 inserting in lieu thereof the word "offense";

7 (2) Section 3184 is amended by deleting the word "crimes" and
8 inserting in lieu thereof the word "offenses";

9 (3) Section 3185 is amended by deleting paragraphs (1) to (16) and
10 inserting in lieu thereof the following:

11 "(1) Murder, attempted murder, and aggravated battery;

12 "(2) Forgery or counterfeiting;

13 "(3) Theft of public funds, committed by public officers, em-
14 ployees, or depositaries;

15 "(4) Theft of an amount not less than \$100 in value;

16 "(5) Robbery;

17 "(6) Burglary;

18 "(7) Perjury, false swearing, or witness bribery;

19 "(8) Rape;

20 "(9) Arson;

21 "(10) Piracy by the law of nations;

22 "(11) Murder, attempted murder, manslaughter, and aggra-
23 vated battery, committed on the high seas on board a ship owned
24 by or in control of citizens or residents of such foreign country
25 or territory and not under the flag of the United States or of
26 some other government;

27 "(12) Reckless endangerment when the offense involves mali-
28 cious destruction of or attempt to destroy railways, trams, ves-
29 sels, bridges, dwellings, public edifices, or other buildings."; and

30 (4) Section 3193 is amended by deleting the word "crime" and in-
31 serting in lieu thereof the words "an offense".

32 (g) (1) Title 18, United States Code, is amended by adding after
33 chapter 209 a new chapter 210 as follows:

34 **"Chapter 210.—INTERSTATE AGREEMENT ON**
35 **DETAINERS**

"Sec.

"3200. Interstate Agreement on Detainers as law of the United States and the
District of Columbia.

"3201. Definition of term 'Governor' for purposes of United States and District
of Columbia.

"3202. Definition of term 'appropriate court'.

"3203. Enforcement and cooperation by courts, departments, agencies, officers, and employees of United States and District of Columbia.

"3204. Regulations, forms, and instructions.

"3205. Reservation of right to alter, amend, or repeal.

§ 3200. Interstate Agreement on Detainers as law of the United States and the District of Columbia

"The Interstate Agreement on Detainers, as enacted into law and entered into by the United States and the District of Columbia under the Act of December 9, 1970, 84 Stat. 1397, is hereby continued as the law of the United States and the District of Columbia with all jurisdictions legally joining in substantially the same form :

" 'The contracting States solemnly agree that :

" 'ARTICLE I

" 'The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

" 'ARTICLE II

" 'As used in this agreement :

" '(a) "State" shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

" '(b) "Sending State" shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

" '(c) "Receiving State" shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

" 'ARTICLE III

" '(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever

1 during the continuance of the term of imprisonment there is pending
2 in any other party State any untried indictment, information, or com-
3 plaint on the basis of which a detainer has been lodged against the
4 prisoner, he shall be brought to trial within one hundred and eighty
5 days after he shall have caused to be delivered to the prosecuting officer
6 and the appropriate court of the prosecuting officer's jurisdiction writ-
7 ten notice of the place of his imprisonment and his request for a final
8 disposition to be made of the indictment, information, or complaint:
9 *Provided, That, for good cause shown in open court, the prisoner or*
10 *his counsel being present, the court having jurisdiction of the matter*
11 *may grant any necessary or reasonable continuance. The request of the*
12 *prisoner shall be accompanied by a certificate of the appropriate official*
13 *having custody of the prisoner, stating the term of commitment under*
14 *which the prisoner is being held, the time already served, the time*
15 *remaining to be served on the sentence, the amount of good time earned,*
16 *the time of parole eligibility of the prisoner, and any decision of the*
17 *State parole agency relating to the prisoner.*

18 “(b) The written notice and request for final disposition referred
19 to in paragraph (a) hereof shall be given or sent by the prisoner to the
20 warden, commissioner of corrections, or other official having custody
21 of him, who shall promptly forward it together with the certificate
22 to the appropriate prosecuting official and court by registered or cer-
23 tified mail, return receipt requested.

24 “(c) The warden, commissioner of corrections, or other official
25 having custody of the prisoner shall promptly inform him of the source
26 and contents of any detainer lodged against him and shall also inform
27 him of his right to make a request for final disposition of the indict-
28 ment, information, or complaint on which the detainer is based.

29 “(d) Any request for final disposition made by a prisoner pursuant
30 to paragraph (a) hereof shall operate as a request for final disposition
31 of all untried indictments, informations, or complaints on the basis of
32 which detainers have been lodged against the prisoner from the State
33 to whose prosecuting official the request for final disposition is specifi-
34 cally directed. The warden, commissioner of corrections, or other of-
35 ficial having custody of the prisoner shall forthwith notify all appro-
36 priate prosecuting officers and courts in the several jurisdictions
37 within the State to which the prisoner's request for final disposition
38 is being sent of the proceeding being initiated by the prisoner. Any
39 notification sent pursuant to this paragraph shall be accompanied by
40 copies of the prisoner's written notice, request, and the certificate.

1 If trial is not had on any indictment, information, or complaint con-
2 templated hereby prior to the return of the prisoner to the original
3 place of imprisonment, such indictment, information, or complaint
4 shall not be of any further force or effect, and the court shall enter
5 an order dismissing the same with prejudice.

6 ““(e) Any request for final disposition made by a prisoner pursu-
7 ant to paragraph (a) hereof shall also be deemed to be a waiver of
8 extradition with respect to any charge or proceeding contemplated
9 thereby or included therein by reason of paragraph (d) hereof, and
10 a waiver of extradition to the receiving State to serve any sentence
11 there imposed upon him, after completion of his term of imprison-
12 ment in the sending State. The request for final disposition shall also
13 constitute a consent by the prisoner to the production of his body in
14 any court where his presence may be required in order to effectuate
15 the purposes of this agreement and a further consent voluntarily to
16 be returned to the original place of imprisonment in accordance with
17 the provisions of this agreement. Nothing in this paragraph shall
18 prevent the imposition of a concurrent sentence if otherwise permitted
19 by law.

20 ““(f) Escape from custody by the prisoner subsequent to his execu-
21 tion of the request for final disposition referred to in paragraph (a)
22 hereof shall void the request.

23 ““ARTICLE IV

24 ““(a) The appropriate officer of the jurisdiction in which an un-
25 tried indictment, information, or complaint is pending shall be en-
26 titled to have a prisoner against whom he has lodged a detainer and
27 who is serving a term of imprisonment in any party State made avail-
28 able in accordance with article V(a) hereof upon presentation of a
29 written request for temporary custody or availability to the appro-
30 priate authorities of the State in which the prisoner is incarcerated:
31 *Provided*, That the court having jurisdiction of such indictment, in-
32 formation, or complaint shall have duly approved, recorded, and trans-
33 mitted the request: *And provided further*, That there shall be a period
34 of thirty days after receipt by the appropriate authorities before the
35 request be honored, within which period the Governor of the sending
36 State may disapprove the request for temporary custody or avail-
37 ability, either upon his own motion or upon motion of the prisoner.

38 ““(b) Upon request of the officer's written request as provided in
39 paragraph (a) hereof, the appropriate authorities having the pris-
40 oner in custody shall furnish the officer with a certificate stating the

1 term of commitment under which the prisoner is being held, the time
2 already served, the time remaining to be served on the sentence, the
3 amount of good time earned, the time of parole eligibility of the pris-
4 oner, and any decisions of the State parole agency relating to the
5 prisoner. Said authorities simultaneously shall furnish all other offi-
6 cers and appropriate courts in the receiving State who has lodged
7 detainers against the prisoner with similar certificates and with notices
8 informing them of the request for custody or availability and of the
9 reasons therefor.

10 ““(c) In respect of any proceeding made possible by this article,
11 trial shall be commenced within one hundred and twenty days of the
12 arrival of the prisoner in the receiving State, but for good cause shown
13 in open court, the prisoner or his counsel being present, the court hav-
14 ing jurisdiction of the matter may grant any necessary or reasonable
15 continuance.

16 ““(d) Nothing contained in this article shall be construed to deprive
17 any prisoner of any right which he may have to contest the legality of
18 his delivery as provided in paragraph (a) hereof, but such delivery
19 may not be opposed or denied on the ground that the executive author-
20 ity of the sending State has not affirmatively consented to or ordered
21 such delivery.

22 ““(e) If trial is not had on any indictment, information, or com-
23 plaint contemplated hereby prior to the prisoner's being returned to
24 the original place of imprisonment pursuant to article V(e) hereof,
25 such indictment, information, or complaint shall not be of any further
26 force or effect, and the court shall enter an order dismissing the same
27 with prejudice.

28 ““ARTICLE V

29 ““(a) In response to a request made under article III or article IV
30 hereof, the appropriate authority in a sending State shall offer to
31 deliver temporary custody of such prisoner to the appropriate author-
32 ity in the State where such indictment, information, or complaint is
33 pending against such person in order that speedy and efficient prosecu-
34 tion may be had. If the request for final disposition is made by the
35 prisoner, the offer of temporary custody shall accompany the written
36 notice provided for in article III of this agreement. In the case of a
37 Federal prisoner, the appropriate authority in the receiving State
38 shall be entitled to temporary custody as provided by this agreement
39 or to the prisoner's presence in Federal custody at the place of trial,
40 whichever custodial arrangement may be approved by the custodian.

1 “(b) The officer or other representative of a State accepting an
2 offer of temporary custody shall present the following upon demand:

3 “(1) Proper identification and evidence of his authority to act
4 for the State into whose temporary custody this prisoner is to be
5 given.

6 “(2) A duly certified copy of the indictment, information, or com-
7 plaint on the basis of which the detainer has been lodged and on the
8 basis of which the request for temporary custody of the prisoner has
9 been made.

10 “(c) If the appropriate authority shall refuse or fail to accept
11 temporary custody of said person, or in the event that an action on
12 the indictment, information, or complaint on the basis of which the
13 detainer has been lodged is not brought to trial within the period pro-
14 vided in article III or article IV hereof, the appropriate court of the
15 jurisdiction where the indictment, information, or complaint has been
16 pending shall enter an order dismissing the same with prejudice, and
17 any detainer based thereon shall cease to be of any force or effect.

18 “(d) The temporary custody referred to in this agreement shall
19 be only for the purpose of permitting prosecution on the charge or
20 charges contained in one or more untried indictments, informations,
21 or complaints which form the basis of the detainer or detainers or for
22 prosecution on any other charge or charges arising out of the same
23 transaction. Except for his attendance at court and while being trans-
24 ported to or from any place at which his presence may be required, the
25 prisoner shall be held in a suitable jail or other facility regularly used
26 for persons awaiting prosecution.

27 “(e) At the earliest practicable time consonant with the purposes
28 of this agreement, the prisoner shall be returned to the sending State.

29 “(f) During the continuance of temporary custody or while the
30 prisoner is otherwise being made available for trial as required by this
31 agreement, time being served on the sentence shall continue to run but
32 good time shall be earned by the prisoner only if, and to the extent
33 that, the law and practice of the jurisdiction which imposed the sen-
34 tence may allow.

35 “(g) For all purposes other than that for which temporary cus-
36 tody as provided in this agreement is exercised, the prisoner shall be
37 deemed to remain in the custody of and subject to the jurisdiction of
38 the sending State and any escape from temporary custody may be dealt
39 with in the same manner as an escape from the original place of im-
40 prisonment or in any other manner permitted by law.

1 “(h) From the time that a party State receives custody of a prison-
2 er pursuant to this agreement until such prisoner is returned to the
3 territory and custody of the sending State, the State in which the one
4 or more untried indictments, informations, or complaints are pending
5 or in which trial is being held shall be responsible for the prisoner and
6 shall also pay all costs of transporting, caring for, keeping, and return-
7 ing the prisoner. The provisions of this paragraph shall govern unless
8 the States concerned shall have entered into a supplementary agree-
9 ment providing for a different allocation of costs and responsibilities
10 as between or among themselves. Nothing herein contained shall be
11 construed to alter or affect any internal relationship among the depart-
12 ments, agencies, and officers of and in the government of a party State,
13 or between a party State and its subdivisions, as to the payment of
14 costs, or responsibilities therefor.

15 “‘ARTICLE VI

16 “(a) In determining the duration and expiration dates of the time
17 periods provided in articles III and IV of this agreement, the running
18 of said time periods shall be tolled whenever and for as long as the
19 prisoner is unable to stand trial, as determined by the court having
20 jurisdiction of the matter.

21 “(b) No provision of this agreement, and no remedy made avail-
22 able by this agreement shall apply to any person who is adjudged
23 to be mentally ill.

24 “‘ARTICLE VII

25 “‘Each State party to this agreement shall designate an officer who,
26 acting jointly with like officers of other party States, shall promul-
27 gate rules and regulations to carry out more effectively the terms and
28 provisions of this agreement, and who shall provide, within and with-
29 out the State, information necessary to the effective operation of
30 this agreement.

31 “‘ARTICLE VIII

32 “‘This agreement shall enter into full force and effect as to a party
33 State when such State has enacted the same into law. A State party
34 to this agreement may withdraw herefrom by enacting a statute re-
35 pealing the same. However, the withdrawal of any State shall not af-
36 fect the status of any proceedings already initiated by inmates or by
37 State officers at the time such withdrawal takes effect, nor shall it af-
38 fect their rights in respect thereof.

“ARTICLE IX

“‘This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.’

“§ 3201. Definition of term ‘Governor’ for purposes of United States and District of Columbia

“The term ‘Governor’ as used in the agreement on detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Commissioner of the District of Columbia.

“§ 3202. Definition of term ‘appropriate court’

“The term ‘appropriate court’ as used in the agreement on detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending.

“§ 3203. Enforcement and cooperation by courts, departments, agencies, officers, and employees of United States and District of Columbia

“All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose.

“§ 3204. Regulations, forms, and instructions

“For the United States, the Attorney General, and for the District of Columbia, the Commissioner of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this Act.

1 **“§ 3205. Reservation of right to alter, amend, or repeal**

2 “The right to alter, amend, or repeal this Act is expressly reserved.”;
3 and

4 (2) The analysis at the beginning of Part IV is amended by adding
5 after

“209. Extradition ----- 3181”

6 the following new item:

“210. Interstate Agreement on Detainers----- 3200”.

7 (h) Chapter 211 of title 18, United States Code, is amended as
8 follows:

9 (1) Section 3235 is amended by deleting the words “offense punish-
10 able with death” and inserting in lieu thereof the words “a Class A
11 felony”;

12 (2) Section 3236 is amended by deleting the words “murder or man-
13 slaughter” and inserting in lieu thereof the words “murder, mans-
14 slaughter, or negligent homicide”;

15 (3) Subsection (b) of section 3237 is amended to read as follows:

16 “(b) Notwithstanding subsection (a)—

17 “(1) where an offense is described in section 1401(a) (3) or
18 (5) or in section 1402(a) (1) or (3), or

19 “(2) where an offense involves use of the mails and is an offense
20 described in section 1401(a) (1) or (6) or in section 1402(a) (6) or
21 is an offense of making a false statement in connection with any
22 matter arising under the internal revenue laws, and prosecution is
23 begun in a judicial district other than the judicial district in which
24 the defendant resides, he may upon motion filed in the district in
25 which the prosecution is begun, elect to be tried in the district in
26 which he was residing at the time the alleged offense was com-
27 mitted: *Provided*, That the motion is filed within twenty days
28 after arraignment of the defendant upon indictment or
29 information.”;

30 (4) Section 3239 is amended by deleting the words “indicted under
31 sections 875, 876 or 877 of this title, with respect to communications
32 originating” and inserting in lieu thereof the words “charged with
33 making a threat, under section 1616 where the jurisdictional base is
34 subsection (c) (2), (3), or (4), or under section 1617 where the juris-
35 dictional base is subsection (c) (2) or (3), or under section 1618 if
36 the United States mails or a facility in interstate or foreign commerce
37 is used in the commission of the offense, and the threat is alleged to
38 have originated”; and

1 (5) Section 3242 is amended to read as follows:

2 **"§ 3242. Indians committing certain offenses; acts on reservations**

3 "All Indians committing any of the following offenses; namely,
4 murder, manslaughter, negligent homicide, rape, sexual abuse of a
5 minor, aggravated battery, simple battery, attempted murder, at-
6 tempted rape, arson, burglary, robbery, and theft on and within the
7 Indian country shall be tried in the same courts, and in the same
8 manner, as are all other persons committing any of the above crimes
9 within the exclusive jurisdiction of the United States."

10 (i) Chapter 213 of title 18, United States Code is amended to read
11 as follows:

12 **"Chapter 213.—BARS TO PROSECUTION**

"Sec.

"3281. Bars to prosecution.

13 **"§ 3281. Bars to prosecution**

14 "(a) BAR.—A prosecution is barred if it is commenced after the
15 applicable period of limitation.

16 "(b) LIMITATION PERIODS GENERALLY.—Prosecution for an offense
17 against the United States, except as provided in subsection (c), must
18 be commenced within five years after the offense.

19 "(c) EXTENDED PERIOD FOR CERTAIN CRIMES.—Murder may be prose-
20 cuted at any time. Treason, sabotage or espionage may be prosecuted
21 at any time if the offense charged is a Class A felony.

22 "(d) EXTENDED PERIOD TO COMMENCE NEW PROSECUTION.—If a time-
23 ly complaint, indictment or information is dismissed for any error,
24 defect, insufficiency or irregularity, a new prosecution may be com-
25 menced within three months after the dismissal even though the pe-
26 riod of limitation has expired at the time of dismissal or will expire
27 within the three month period.

28 "(e) COMMENCEMENT OF PROSECUTION.—

29 "(1) A prosecution is commenced upon the filing of a complaint
30 before a judicial officer of the United States empowered to issue a war-
31 rant or upon the filing of an indictment or information. Commence-
32 ment of prosecution for one offense shall be deemed commencement of
33 prosecution for any included offenses.

34 "(2) A prosecution shall be deemed to have been timely commenced
35 even if the period of limitation has expired—

36 "(A) for an offense included in the offense charged, if as to the
37 offense charged the period of limitation has not expired or there
38 is no such period, and there is, after the evidence on either side is
39 closed at the trial, sufficient evidence to sustain a conviction of the
40 offense charged; or

1 “(B) for an offense to which the defendant enters a plea of
2 guilty or nolo contendere.

3 “(f) TOLLING OF PERIOD OF LIMITATION.—The period of limitation
4 shall not run as to any person while he conceals himself within the
5 United States to avoid justice, or while he is beyond the territorial
6 jurisdiction of the United States.

7 “(g) CONTINUING OFFENSES.—For purposes of this section con-
8 tinuing offenses include offenses described in the following sections:

9 “(1) section 1115 (evading military or substitute service) until
10 the person registers or reports as required by law;

11 “(2) section 1127 (failing to register as a person trained in a
12 foreign espionage system) until the person registers as required
13 by law or corrects the false statement;

14 “(3) section 1764 (bankruptcy fraud) involving concealment of
15 any property of a bankrupt until the bankrupt has been finally
16 discharged from bankruptcy or until a discharge from bankruptcy
17 has been finally denied, and

18 “(4) section 1002 (criminal conspiracy) until all the objectives
19 of the conspiracy are accomplished or frustrated, or until the
20 conspiracy is abandoned.”

21 “(j) Chapter 216 of title 18, United States Code, is amended by
22 deleting the word “criminal” in the first sentence of section 3332.

23 “(k) Chapter 219 of title 18, United States Code, is amended by
24 amending subsection (f) of section 3401 to read as follows:

25 “(f) As used in this section, the term ‘minor offenses’ means mis-
26 demeanors or infractions, except that the term does not include any
27 offense punishable under any of the following provisions of law: sec-
28 tion 314(a) of the Federal Corrupt Practices Act, 1925 (2 U.S.C.
29 252(a)); section 1311 of title 5, United States Code; section 374 of the
30 Criminal Code Reform Act of 1973 (47 U.S.C.); sections 1326,
31 1355, 1523, and 1524 of title 18, United States Code; sections 1332 and
32 1333, where the federal official proceeding is held upon a matter under
33 inquiry before either House, or any joint committee established by a
34 joint or concurrent resolution of the two Houses of Congress, or any
35 committee of either House of Congress; and sections 1501 and 1502 of
36 title 18, United States Code, if the offense is related to the conduct of a
37 search or the procurement or execution of a search warrant.”

38 “(l) Chapter 221 of title 18, United States Code, is amended as
39 follows:

1 (1) Section 3432 is amended by deleting the word “capital” in the
2 heading and inserting in lieu thereof the words “treason and Class
3 A felony” and by deleting the words “or other capital offense” in the
4 body of the section and inserting in lieu thereof the words “or a Class
5 A felony”;

6 (2) Section 3435 is repealed; and

7 (3) The analysis at the beginning of the chapter is amended—

8 (A) by deleting the word “capital” in the item relating to sec-
9 tion 3432 and inserting in lieu thereof the words “treason and
10 Class A felony”; and

11 (B) by amending the item relating to section 3435 to read as
12 follows:

“3435. Repealed.”

13 (m) Chapter 223 of title 18, United States Code, is amended as
14 follows:

15 (1) Sections 3487, 3497, and 3503 are repealed;

16 (2) Section 3501 is amended by deleting the words “criminal pros-
17 ecution” in subsection (a) and (c) and inserting in lieu thereof the
18 words “prosecution for an offense”;

19 (3) Section 3502 is amended by deleting the word “crime” and in-
20 serting in lieu thereof the word “offense” and by deleting the word
21 “criminal”;

22 (4) Section 3504(b) is amended by deleting “2510(5)” and insert-
23 ing in lieu thereof “1534(c)”;

24 (5) A new section 3505 is added at the end thereof as follows:

25 **“§ 3505. Prohibition of use as evidence of intercepted wire or oral**
26 **communications**

27 “Whenever any wire or oral communication has been intercepted,
28 no part of the contents of such communication and no evidence derived
29 therefrom may be received in evidence in any trial, hearing, or other
30 proceeding in or before any court, grand jury, department, officer,
31 agency, regulatory body, legislative committee, or other authority of
32 the United States, a State, or a political subdivision thereof if the
33 disclosure of that information would be a violation of section 1542 or
34 1543 or of chapter 206 of this title.”; and

35 (6) The analysis at the beginning of the chapter is amended—

36 (A) by amending the items relating to sections 3487, 3497, and
37 3503 to read “3487. Repealed.”, “3497. Repealed.”, and “3503. Re-
38 pealed.”, respectively; and

1 (B) by adding a new item at the end to read as follows: "3505.
2 Prohibition of use as evidence of intercepted wire or oral com-
3 munication."

4 (n) Chapter 227 of title 18, United States Code, is amended as
5 follows:

6 (1) Sections 3563, 3564, 3565, 3567, 3568, 3569, 3575, 3576, and 3577
7 are repealed.

8 (2) Section 3570 is amended to read as follows:

9 **"§ 3570. Presidential remission as affecting unremitted part**

10 "Whenever, by the judgment of any court or judicial officer of the
11 United States, in any criminal proceeding, any person is sentenced to
12 two kinds of punishment, the one a fine and the other imprisonment,
13 the President's remission in whole or in part of either kind shall not
14 impair the legal validity of the other kind, or of any portion of either
15 kind, not remitted."; and

16 (3) The analysis at the beginning of the chapter is amended to read
17 as follows:

18 **"Chapter 227.—SENTENCE, JUDGMENT, AND EXECUTION**

"Sec.

"3561. Judgment form and entry—Rule.

"3562. Sentence—Rule.

"3563. Repealed.

"3564. Repealed.

"3565. Repealed.

"3566. Execution of death sentence.

"3567. Repealed.

"3568. Repealed.

"3569. Repealed.

"3570. Presidential remission as affecting unremitted part.

"3571. Clerical mistakes—Rule.

"3572. Correction or reduction of sentence—Rule.

"3573. Arrest or setting aside of judgment—Rule.

"3574. Stay of execution; supersedes—Rule.

"3575. Repealed.

"3576. Repealed.

"3577. Repealed.

"3578. Conviction records."

19 (o) Chapter 229 of title 18, United States Code, is amended as fol-
20 lows:

21 (1) Section 3611 is amended by deleting the words "for transport-
22 ing a stolen motor vehicle in interstate or foreign commerce" and in-
23 serting in lieu thereof the words "under section 1731 where the juris-
24 dictional base is subsection (d) (2) (C) of section 1731 and the subject
25 of the offense is a motor vehicle";

26 (2) Section 3612 is amended by deleting the words "official as a
27 bribe" and inserting in lieu thereof "federal public servant in violation
28 of section 1351, 1352, 1353, or 1354";

1 (3) Section 3613 is amended by deleting the words "under sections
2 1855 and 1856 of this title" and inserting in lieu thereof "section 360
3 of the Criminal Code Reform Act of 1973 (43 U.S.C.) and in any
4 case arising under section 1702 or 1703 involving grass or timber
5 fires,";

6 (4) Section 3614 is repealed;

7 (5) Section 3615 is amended by deleting the words "sections 1261-
8 1265 of this title" and inserting in lieu thereof the words "sections 316
9 to 320 of the Criminal Code Reform Act of 1973 (27 U.S.C.
10 to)";

11 (6) Section 3620 is amended by deleting the words "section 2278 of
12 this title" and inserting in lieu thereof the words "section 369 of the
13 Criminal Code Reform Act of 1973 (46 U.S.C.)";

14 (7) The following new sections are added at the end thereof:

15 **"§ 3621. Voiding transactions resulting from bribery, graft, or**
16 **conflict of interest; recovery by the United States**

17 "In addition to any other remedies provided by law the President
18 or, under regulations prescribed by him, the head of any department
19 or agency involved, may declare void and rescind any contract, loan,
20 grant, subsidy, license, right, permit, franchise, use, authority, priv-
21 ilege, benefit, certificate, ruling, decision, opinion, or rate schedule
22 awarded, granted, paid, furnished, or published, or the performance
23 of any service or transfer or delivery of any thing to, by or for any
24 agency of the United States or officer or employee of the United
25 States or person acting on behalf thereof, in relation to which there
26 has been a final conviction for any violation of sections 9101 to 9109
27 of title 5, United States Code, or of section 220 or 221 of the Criminal
28 Code Reform Act of 1973 (12 U.S.C. or), or of section 1321,
29 1322, 1351, 1352, 1353, 1354, 1355, or 1751 of this title.

30 **"§ 3622. Forfeiture of counterfeit paraphernalia**

31 "All counterfeits of any coins or obligations or other securities
32 of the United States or of any foreign government, or any articles,
33 devices, and other things made, possessed, or used in violation of
34 section 226 of the Criminal Code Reform Act of 1973 (12 U.S.C.),
35 or of section 1421, 1731, 1741, 1742, or 1743 of this title with respect
36 to such counterfeits, articles, devices or other things, or of section
37 325 or 328 to 330 of the Criminal Code Reform Act of 1973 (31
38 U.S.C. or to), or any material or apparatus used or fitted
39 or intended to be used, in the making of such counterfeits, arti-
40 cles, devices or things, found in the possession of the person without

1 authority from the Secretary of the Treasury or other proper officer,
2 shall be forfeited to the United States.

3 "Whenever, except as hereinafter in this section provided, any per-
4 son interested in any article, device, or other thing, or material or
5 apparatus seized under this section files with the Secretary of the
6 Treasury, before the disposition thereof, a petition for the remis-
7 sion or mitigation of such forfeiture, the Secretary of the Treasury,
8 if he finds that such forfeiture was incurred without willful negli-
9 gence or without any intention on the part of the petitioner to violate
10 the law, or finds the existence of such mitigating circumstances as
11 to justify the remission or the mitigation of such forfeiture, may
12 remit or mitigate the same upon such terms and conditions as he
13 deems reasonable and just.

14 "If the seizure involves offenses other than offenses against the
15 coinage, currency, obligations or securities of the United States or
16 any foreign government, the petition for the remission or mitigation
17 of forfeiture shall be referred to the Attorney General, who may
18 remit or mitigate the forfeiture upon such terms as he deems reason-
19 able and just.

20 **"§ 3623. Forfeiture of relanded or smuggled goods**

21 "Merchandise relanded in the United States in violation of section
22 1421, shall be forfeited to the United States. Merchandise introduced
23 into the United States in violation of section 1421, or the value there-
24 of, to be recovered from any person convicted of violating the section
25 with respect to that merchandise, shall be forfeited to the United
26 States.

27 **"§ 3624. Forfeiture of merchandise fraudulently concealed, re-**
28 **moved, repacked or remarked in bonded warehouses**

29 "Merchandise fraudulently concealed, removed, or repacked in any
30 bonded warehouse, and packages, in a bonded warehouse, upon which
31 marks or numbers have been fraudulently altered, defaced or oblit-
32 erated, shall be forfeited to the United States.

33 **"§ 3625. Forfeiture for making false claim for refund of duties**

34 "If a person violates section 1343 or 1731 by filing a false or fraudu-
35 lent entry or claim for payment of drawback, allowance, or refund of
36 duties upon the exportation of merchandise, or by making or filing
37 a false affidavit, abstract, record, certificate, or other document, with
38 a view to securing the payment to himself or others of any drawback,
39 allowance, or refund of duties on the exportation of merchandise

1 greater than that legally due thereon, the merchandise or the value
2 thereof shall be forfeited.

3 **“§ 3626. Forfeiture of explosive materials**

4 “Any explosive materials involved or used or intended to be used
5 in violation of section 238 to 245 of the Criminal Code Reform Act
6 of 1973 (15 U.S.C. to) or section 811 of this title or any
7 other rule or regulation promulgated thereunder or in violation of
8 any criminal law of the United States shall be subject to seizure and
9 forfeiture, and all provisions of the Internal Revenue Code of 1954
10 relating to the seizure, forfeiture, and disposition of firearms, as
11 defined in section 5845(a) of that Code, shall, so far as applicable,
12 extend to seizures and forfeitures under this section.

13 **“§ 3627. Forfeiture of firearms**

14 “Any firearm or ammunition involved in or used or intended to be
15 used in, any violation of the provisions of sections 246 to 251 of the
16 Criminal Code Reform Act of 1973 (15 U.S.C. to) or of
17 section 1812 of this title or any rule or regulation promulgated there-
18 under, or any violation of any other criminal law of the United States,
19 shall be subject to seizure and forfeiture and all provisions of the
20 Internal Revenue Code of 1954 relating to seizure, forfeiture, and
21 disposition of firearms, as defined in section 5845(a) of that Code,
22 shall, so far as applicable, extend to seizures and forfeitures under
23 the provisions of this section.

24 **“§ 3628. Forfeiture of vessel or aircraft**

25 “A vessel or aircraft taken from the United States against the
26 interests of neutrality, in violation of section 1204, and the tackle,
27 apparel, furniture, equipment, and cargo of the vessel or aircraft, shall
28 be forfeited to the United States.

29 **“§ 3629. Disposal of obscene matters transported for sale or
30 distribution**

31 “When any person is convicted of a violation of section 1851, the
32 court in its judgment of conviction may, in addition to the penalty
33 prescribed, order the confiscation and disposal of items described in
34 that section which were found in the possession or under the immediate
35 control of such person at the time of his arrest.

36 **“§ 3630. Forfeiture of property used in a gambling business**

37 “Any property, including money, used in violation of the provisions
38 of section 1831 or 1832 may be seized and forfeited to the United
39 States. All provisions of law relating to the seizures, summary, and
40 judicial forfeiture procedures, and condemnation of vessels, vehicles,

1 merchandise, and baggage for violation of the customs laws; the dis-
2 position of such vessels, vehicles, merchandise, and baggage or the pro-
3 ceeds from such sale; the remission or mitigation of such forfeitures;
4 and the compromise of claims and the award of compensation to in-
5 formers in respect of such forfeitures shall apply to seizures and for-
6 feitures incurred or alleged to have been incurred under the provi-
7 sions of this section, insofar as applicable and not inconsistent with
8 such provisions. Such duties as are imposed upon the collector of cus-
9 toms or any other person in respect to the seizure and forfeiture of
10 vessels, vehicles, merchandise, and baggage under the customs laws
11 shall be performed with respect to seizures and forfeitures of prop-
12 erty used or intended for use in violation of section 1831 or 1832 by
13 such officers, agents, or other persons as may be designated for that
14 purpose by the Attorney General.

15 **“§ 3631. Forfeiture of racketeering income**

16 “(a) Whoever violates any provision of section 1861 or conspires
17 to violate that section, shall forfeit to the United States (1) any
18 interest he has acquired or maintained in violation of section 1861,
19 and (2) any interest in, security of, claim against, or property or
20 contractual right of any kind affording a source of influence over, any
21 enterprise which he has established, operated, controlled, conducted,
22 or participated in the conduct of, in violation of section 1861.

23 “(b) In any action brought by the United States under this section,
24 the district courts of the United States shall have jurisdiction to enter
25 such restraining orders or prohibitions, or to take such other actions,
26 including, but not limited to, the acceptance of satisfactory perform-
27 ance bonds, in connection with any property or other interest subject
28 to forfeiture under this section, as it shall deem proper.

29 “(c) Upon conviction of a person under section 1861, the court shall
30 authorize the Attorney General to seize all property or other interest
31 declared forfeited under this section upon such terms and conditions
32 as the court shall deem proper. If a property right or other interest
33 is not exercisable or transferable for value by the United States, it shall
34 expire, and shall not revert to the convicted person. All provisions of
35 law relating to the disposition of property, or the proceeds from the
36 sale thereof, or the remission or mitigation of forfeitures for violation
37 of the customs laws, and the compromise of claims and the award of
38 compensation to informers in respect of such forfeitures shall apply
39 to forfeitures incurred, or alleged to have been incurred, under the
40 provisions of this section, insofar as applicable and not inconsistent

1 with the provisions hereof. Such duties as are imposed upon the collec-
2 tor of customs or any other person with respect to the disposition of
3 property under the customs laws shall be performed under this chapter
4 by the Attorney General. The United States shall dispose of all such
5 property as soon as commercially feasible, making due provision for
6 the rights of innocent persons.

7 **“§ 3632. Forfeiture of office for tampering with a government**
8 **record**

9 “If a Federal public servant having custody of a file, record, or
10 other document owned by, or under the care, custody, or control of,
11 the United States, is convicted of a violation of section 1343, 1344 or
12 1731 with respect to that file, record, or other document, he shall for-
13 feited his office and be disqualified from holding any office under the
14 United States.

15 **“§ 3633. Forfeiture of misused vessel**

16 “If with the knowledge of the owner or master or other person in
17 charge or command thereof, the owner, master or person in charge or
18 command of any private vessel, foreign or domestic, or a member of
19 the crew or other person, within the territorial waters of the United
20 States, willfully causes or permits the destruction or injury of such
21 vessel or knowingly permits said vessel to be used as a place of resort
22 for any person conspiring with another or preparing to commit any
23 offense against the United States, or any offense in violation of the
24 treaties of the United States or of the obligations of the United States
25 under the law of nations, or to defraud the United States; or know-
26 ingly permits such vessel to be used in violation of the rights and
27 obligations of the United States under the law of nations, the vessel,
28 together with her tackle, apparel, furniture, and equipment, shall be
29 subject to seizure and forfeiture to the United States in the same
30 manner as merchandise is forfeited for violation of the customs
31 revenue laws.

32 **“§ 3634. Confiscation of wire or oral communication intercepting**
33 **devices**

34 “Any electronic, mechanical, or other device used, sent, carried, man-
35 ufactured, assembled, possessed, sold, or advertised in violation of

1 section 1532 or section 1533 may be seized and forfeited to the United
 2 States. All provisions of law relating to (1) the seizure, summary and
 3 judicial forfeiture, and condemnation of vessels, vehicles, merchandise,
 4 and baggage for violations of the customs laws contained in title 19
 5 of the United States Code, (2) the disposition of such vessels, vehicles,
 6 merchandise, and baggage or the proceeds from the sale thereof, (3)
 7 the remission or mitigation of such forfeiture, (4) the compromise of
 8 claims, and (5) the award of compensation to informers in respect of
 9 such forfeitures, shall apply to seizures and forfeitures incurred, or
 10 alleged to have been incurred, under the provisions of this section, inso-
 11 far as applicable and not inconsistent with the provisions of this sec-
 12 tion; except that such duties as are imposed upon the collector of
 13 customs or any other person with respect to the seizure and forfeiture
 14 of vessels, vehicles, merchandise, and baggage under the provisions of
 15 the customs laws contained in title 19 of the United States Code shall
 16 be performed with respect to seizure and forfeiture of electronic, me-
 17 chanical, or other intercepting devices under this section by such
 18 officers, agents, or other persons as may be authorized or designated
 19 for that purpose by the Attorney General.”; and

20 (8) The analysis at the beginning of the chapter is amended—

21 (A) by amending the item relating to section 3614 to read as
 22 follows:

“3614. Repealed.”; and

23 (B) by adding at the end thereof the following new items:

“3621. Voiding transactions resulting from bribery, graft, or conflict of interest;
 recovery by the United States.

“3622. Forfeiture of counterfeit paraphernalia.

“3623. Forfeiture of relanded or smuggled goods.

“3624. Forfeiture of merchandise fraudulently concealed, removed, repacked or
 remarked in bonded warehouses.

“3625. Forfeiture for making false claim for refund of duties.

“3626. Forfeiture of explosive materials.

“3627. Forfeiture of firearms.

“3628. Forfeiture of vessel or aircraft.

“3629. Disposal of obscene matters transported for sale or distribution.

“3630. Forfeiture of property used in a gambling business.

“3631. Forfeiture of racketeering income.

“3632. Forfeiture of office for tampering with a government record.

“3633. Forfeiture of misused vessel.

“3634. Confiscation of wire or oral communication intercepting devices.”

1 (p) (1) A new chapter 230 is added to title 18, United States Code,
2 as follows:

3 **“Chapter 230.—CIVIL REMEDIES**

“Sec.

“3641. Injunctions against executing a scheme to defraud.

“3642. Definitions for sections 3643 through 3646.

“3643. Civil remedies against racketeering activities.

“3644. Venue and process.

“3645. Expedition of actions.

“3646. Evidence.

“3647. Civil investigative demand.

4 **“§ 3641. Injunctions against executing a scheme to defraud**

5 “Upon evidence satisfactory to the Attorney General that a person
6 is engaged in any act or practice which constitutes or could constitute
7 a violation of section 1734, the Attorney General may bring an action
8 in any district court of the United States to enjoin such act or prac-
9 tice, and, upon a proper showing, a permanent or temporary injunc-
10 tion or restraining order shall be granted by the court together
11 with such other equitable relief as may be appropriate.

12 **“§ 3642. Definitions for sections 3643 through 3646**

13 “As used in sections 3643 through 3646—

14 “(a) ‘racketeering investigator’ means any attorney or investi-
15 gator so designated by the Attorney General and charged with
16 the duty of enforcing or carrying into effect this chapter;

17 “(b) ‘racketeering investigation’ means any inquiry conducted
18 by any racketeering investigator for the purpose of ascertaining
19 whether any person has been involved in any violation of this
20 chapter or of any final order, judgment, or decree of any court
21 of the United States, duly entered in any case or proceeding under
22 this chapter;

23 “(c) ‘documentary material’ includes any book, paper, docu-
24 ment, record, recording, or other material; and

25 “(d) ‘Attorney General’ includes the Attorney General of the
26 United States, the Deputy Attorney General of the United States,
27 any Assistant Attorney General of the United States, or any em-
28 ployee of the Department of Justice or any employee of the

1 department or agency of the United States so designated by the
2 Attorney General to carry out the powers conferred on the Attor-
3 ney General by this chapter. Any department or agency so desig-
4 nated may use in investigations authorized by this chapter either
5 the investigative provisions of this chapter or the investigative
6 power of such department or agency otherwise conferred by law.

7 **“§ 3643. Civil remedies against racketeering activities**

8 “(a) The district courts of the United States shall have jurisdiction
9 to prevent and restrain violations of section 1861 by issuing appro-
10 priate orders, including, but not limited to: ordering any person to
11 divest himself of any interest, direct or indirect, in any enterprise;
12 imposing reasonable restrictions on the future activities or invest-
13 ments of any person, including, but not limited to, prohibiting any
14 person from engaging in the same type of endeavor as the enterprise
15 engaged in, the activities of which affect interstate or foreign com-
16 merce; or ordering dissolution or reorganization of any enterprise,
17 making due provision for the rights of innocent persons.

18 “(b) The Attorney General may institute proceedings under this
19 section. In any action brought by the United States under this section,
20 the court shall proceed as soon as practicable to the hearing and deter-
21 mination thereof. Pending final determination thereof, the court may
22 at any time enter such restraining orders or prohibitions, or take
23 such other actions, including the acceptance of satisfactory per-
24 formance bonds, as it shall deem proper.

25 “(c) Any person injured in his business or property by reason of
26 a violation of section 1861 may sue therefor in any appropriate United
27 States district court and shall recover threefold the damages he sus-
28 tains and the cost of the suit, including a reasonable attorney’s fee.

29 “(d) A final judgment or decree rendered in favor of the United
30 States in any criminal proceeding brought by the United States under
31 section 1861 shall estop the defendant from denying the essential
32 allegations of the criminal offense in any subsequent civil proceeding
33 brought by the United States.

34 **“§ 3644. Venue and process**

35 “(a) Any civil action or proceeding under section 3643 against any
36 person may be instituted in the district court of the United States for

1 any district in which such person resides, is found, has an agent, or
2 transacts his affairs.

3 “(b) In any action under section 3643 in any district court of the
4 United States in which it is shown that the ends of justice require
5 that other parties residing in any other district be brought before the
6 court, the court may cause such parties to be summoned, and process
7 for that purpose may be served in any judicial district of the United
8 States by the marshal thereof.

9 “(c) In any civil or criminal action or proceeding instituted by the
10 United States under section 1861 or 3643 in the district court of the
11 United States for any judicial district, subpoenas issued by such court
12 to compel the attendance of witnesses may be served in any other judi-
13 cial district, except that in any civil action or proceeding no such sub-
14 poena shall be issued for service upon any individual who resides in
15 another district at a place more than one hundred miles from the
16 place at which such court is held without approval given by a judge
17 of such court upon a showing of good cause.

18 “(d) All other process in any action or proceeding under this chap-
19 ter may be served on any person in any judicial district in which such
20 person resides, is found, has an agent, or transacts his affairs.

21 **“§ 3645. Expedition of actions**

22 “In any civil action instituted under section 3643 by the United
23 States in any district court of the United States, the Attorney General
24 may file with the clerk of such court a certificate stating that in his
25 opinion the case is of general public importance. A copy of that certifi-
26 cate shall be furnished immediately by such clerk to the chief judge
27 or in his absence to the presiding district judge of the district in
28 which such action is pending. Upon receipt of such copy, such judge
29 shall designate immediately a judge of that district to hear and deter-
30 mine the action. The judge so designated shall assign such action for
31 hearing as soon as practicable, participate in the hearings and deter-
32 mination thereof, and cause the action to be expedited in every way.

33 **“§ 3646. Evidence**

34 “In any proceeding ancillary to or in any civil action instituted by
35 the United States under section 3643 the proceedings may be open or
36 closed to the public at the discretion of the court after consideration of
37 the rights of affected persons.

1 **“§ 3647. Civil investigative demand**

2 “(a) Whenever the Attorney General has reason to believe that any
3 person or enterprise may be in possession, custody, or control of any
4 documentary materials relevant to a racketeering investigation, he
5 may, prior to the institution of a civil or criminal proceeding thereon,
6 issue in writing, and cause to be served upon such person, a civil in-
7 vestigative demand requiring such person to produce such material for
8 examination.

9 “(b) Each such demand shall—

10 “(1) state the nature of the conduct constituting the alleged
11 racketeering violation which is under investigation and the pro-
12 vision of law applicable thereto;

13 “(2) describe the class or classes of documentary material pro-
14 duced thereunder with such definiteness and certainty as to permit
15 such material to be fairly identified;

16 “(3) state that the demand is returnable forthwith or prescribe
17 a return date which will provide a reasonable period of time with-
18 in which the material so demanded may be assembled and made
19 available for inspection and copying or reproduction; and

20 “(4) identify the custodian to whom such material shall be
21 made available.

22 “(c) No such demand shall—

23 “(1) contain any requirement which would be held to be un-
24 reasonable if contained in a subpoena duces tecum issued by a court
25 of the United States in aid of a grand jury investigation of such
26 alleged racketeering violation; or

27 “(2) require the production of any documentary evidence which
28 would be privileged from disclosure if demanded by a subpoena
29 duces tecum issued by a court of the United States in aid of a grand
30 jury investigation of such alleged racketeering violation.

31 “(d) Service of any such demand or any petition filed under this
32 section may be made upon a person by—

33 “(1) delivering a duly executed copy thereof to any partner,
34 executive officer, managing agent, or general agent thereof, or to
35 any agent thereof authorized by appointment or by law to receive
36 service of process on behalf of such person, or upon any individual
37 person;

1 “(2) delivering a duly executed copy thereof to the principal
2 office or place of business of the person to be served ; or

3 “(3) depositing such copy in the United States mail, by regis-
4 tered or certified mail duly addressed to such person at the prin-
5 cipal office or place of business.

6 “(e) A verified return by the individual serving any such demand
7 or petition setting forth the manner of such service shall be prima facie
R proof of such service. In the case of service by registered or certified
9 mail, such return shall be accompanied by the return post office receipt
10 of delivery of such demand.

11 “(f) (1) The Attorney General shall designate a racketeering in-
12 vestigator to serve as racketeer document custodian, and such addi-
13 tional racketeering investigators as he shall determine from time to
14 time to be necessary to serve as deputies to such officer.

15 “(2) Any person upon whom any demand issued under this sec-
16 tion has been duly served shall make such material available for in-
17 spection and copying or reproduction to the custodian designated
18 therein at the principal place of business of such person, or at such
19 other place as such custodian and such person thereafter may agree
20 and prescribe in writing or as the court may direct, pursuant to this
21 section on the return date specified in such demand, or on such later
22 date as such custodian may prescribe in writing. Such person may
23 upon written agreement between such person and the custodian sub-
24 stitute copies of all or any part of such material for originals thereof.

25 “(3) The custodian to whom any documentary material is so de-
26 livered shall take physical possession thereof, and shall be responsible
27 for the use made thereof and for the return thereof pursuant to this
28 chapter. The custodian may cause the preparation of such copies of
29 such documentary material as may be required for official use under
30 regulations which shall be promulgated by the Attorney General.
31 While in the possession of the custodian, no material so produced shall
32 be available for examination, without the consent of the person who
33 produced such material, by any individual other than the Attorney
34 General. Under such reasonable terms and conditions as the Attorney
35 General shall prescribe, documentary material while in the possession
36 of the custodian shall be available for examination by the person who
37 produced such material or any duly authorized representatives of such
38 person.

1 “(4) Whenever any attorney has been designated to appear on
2 behalf of the United States before any court or grand jury in any
3 case or proceeding involving any alleged violation of section 1861,
4 the custodian may deliver to such attorney such documentary material
5 in the possession of the custodian as such attorney determines to be
6 required for use in the presentation of such case or proceeding on
7 behalf of the United States. Upon the conclusion of any such case
8 or proceeding, such attorney shall return to the custodian any docu-
9 mentary material so withdrawn which has not passed into the control
10 of such court or grand jury through the introduction thereof into the
11 record of such case or proceeding.

12 “(5) Upon the completion of—

13 “(A) the racketeering investigation for which any documen-
14 tary material was produced under this chapter, and

15 “(B) any case or proceeding arising from such investigation,
16 the custodian shall return to the person who produced such material
17 all such material other than copies thereof made by the Attorney
18 General pursuant to this subsection which has not passed into the con-
19 trol of any court or grand jury through the introduction thereof into
20 the record of such case or proceeding.

21 “(6) When any documentary material has been produced by any
22 person under this section for use in any racketeering investigation,
23 and no such case or proceeding arising therefrom has been instituted
24 within a reasonable time after completion of the examination and
25 analysis of all evidence assembled in the course of such investigation,
26 such person shall be entitled, upon written demand made upon the
27 Attorney General, to the return of all documentary material other
28 than copies thereof made pursuant to this subsection so produced by
29 such person.

30 “(7) In the event of the death, disability, or separation from
31 service of the custodian of any documentary material produced
32 under any demand issued under this section or the official relief of
33 such custodian from responsibility for the custody and control of such
34 material, the Attorney General shall promptly—

35 “(A) designate another racketeering investigator to serve as
36 custodian thereof, and

37 “(B) transmit notice in writing to the person who produced
38 such material as to the identity and address of the successor so
39 designated.

1 Any successor so designated shall have with regard to such ma-
2 terials all duties and responsibilities imposed by this section upon
3 his predecessor in office with regard thereto, except that he shall
4 not be held responsible for any default or dereliction which occurred
5 before his designation as custodian.

6 “(g) Whenever any person fails to comply with any civil investiga-
7 tive demand duly served upon him under this section or whenever
8 satisfactory copying or reproduction of any such material cannot be
9 done and such person refuses to surrender such material, the Attor-
10 ney General may file, in the district court of the United States for
11 any judicial district in which such person resides, is found, or trans-
12 acts business, and serve upon such person a petition for an order of
13 such court for the enforcement of this section, except that if such
14 person transacts business in more than one such district such petition
15 shall be filed in the district in which such person maintains his principal
16 place of business, or in such other district in which such person trans-
17 acts business as may be agreed upon by the parties to such petition.

18 “(h) Within twenty days after the service of any such demand upon
19 any person, or at any time before the return date specified in the de-
20 mand, whichever period is shorter, such person may file, in the district
21 court of the United States for the judicial district within which such
22 person resides, is found, or transacts business, and serve upon such
23 custodian a petition for an order of such court modifying or setting
24 aside such demand. The time allowed for compliance with the demand
25 in whole or in part as deemed proper and ordered by the court shall not
26 run during the pendency of such petition in the court. Such petition
27 shall specify each ground upon which the petitioner relies in seeking
28 such relief, and may be based upon any failure of such demand to
29 comply with the provisions of this section or upon any constitutional
30 or other legal right or privilege of such person.

31 “(i) At any time during which any custodian is in custody or con-
32 trol of any documentary material delivered by any person in compli-
33 ance with any such demand, such person may file, in the district court
34 of the United States for the judicial district within which the office
35 of such custodian is situated, and serve upon such custodian a petition
36 for an order of such court requiring the performance by such cus-
37 todian of any duty imposed upon him by this section.

38 “(j) Whenever any petition is filed in any district court of the
39 United States under this section, such court shall have jurisdiction to
40 hear and determine the matter so presented, and to enter such order

1 or orders as may be required to carry into effect the provisions of this
2 section.”; and

3 (2) The analysis at the beginning of Part IV of title 18 is amended
4 by adding after the item relating to chapter 229 the following new
5 item:

“230. Civil Remedies ----- 3641”

6 (q) Chapter 231 of title 18, United States Code, is amended as
7 follows:

8 (1) The heading of the chapter is amended to read:

9 **“Chapter 231.—PROBATION PROCEDURES**

10 (2) Section 3651 is amended to read as follows:

11 **“§ 3651. Community treatment centers**

12 “The court may require a person as conditions of probation to re-
13 side in or participate in the program of a residential community treat-
14 ment center, or both, for all or part of the period of probation: *Pro-*
15 *vided*, That the Attorney General certifies that adequate treatment
16 facilities, personnel, and programs are available. If the Attorney Gen-
17 eral determines that the person’s residence in the center or participation
18 in its program, or both, should be terminated, because the person can
19 derive no further significant benefits from such residence or partici-
20 pation, or both, or because his residence or participation adversely
21 affects the rehabilitation of other residents or participants, he shall
22 so notify the court, which shall thereupon, by order, make such other
23 provision with respect to the person on probation as it deems appro-
24 priate.

25 “A person residing in a residential community treatment center may
26 be required to pay such costs incident to residence as the Attorney
27 General deems appropriate.”;

28 (3) Section 3653 is amended—

29 (A) by repealing the second paragraph; and

30 (B) by deleting the reference to section “3651” in the third
31 paragraph and inserting in lieu thereof a reference to section
32 “2102”; and

33 (4) The analysis at the beginning of the chapter is amended by
34 deleting “3651. Suspension of sentence and probation.” and inserting
35 in lieu thereof “3651. Community treatment centers.”

36 (r) Chapter 301 of title 18, United States Code, is amended as
37 follows:

38 (1) Section 4002 is amended by deleting the word “Prisons” in the
39 first paragraph and inserting in lieu thereof the word “Corrections”;
40 and

1 (2) Section 4004 is amended by deleting the words "wardens and
2 superintendents, associate wardens and superintendents, chief clerks,
3 record clerks, and parole officers" and inserting in lieu thereof the
4 words "Chief Executive Officers, Assistant Chief Executive Officers,
5 Business Managers, Chief Record Clerks, Caseworkers and Correc-
6 tional Counselors".

7 (s) Chapter 303 of title 18, United States Code, is amended as
8 follows:

9 (1) Section 4041 is amended to read as follows:

10 **"§ 4041. Bureau of Corrections; director and employees**

11 "The Bureau of Prisons, heretofore established in the Department of
12 Justice, shall henceforth be known as the Bureau of Corrections and
13 shall be in the charge of a director appointed by and serving directly
14 under the Attorney General. The Attorney General may also appoint
15 such additional officers and employees as he deems necessary.";

16 (2) Section 4042 is amended by deleting the word "Prisons" and
17 inserting in lieu thereof the word "Corrections"; and

18 (3) The analysis at the beginning of the chapter is amended by
19 deleting "4041. Bureau of Prisons; director and employees." and in-
20 serting in lieu thereof "4041. Bureau of Corrections; director and
21 employees."

22 (t) Chapter 305 of title 18, United States Code, is amended as
23 follows:

24 (1) Section 4082 is amended by repealing subsections (d) and (e)
25 and by redesignating section (f) as subsection (d);

26 (2) A new section 4087 is added at the end thereof as follows:

27 **"§ 4087. Discharge**

28 "If the release date of a prisoner falls upon a Saturday, a Sunday, or
29 on a Monday which is a legal holiday at the place of confinement, the
30 prisoner may be released at the discretion of the warden or keeper on the
31 preceding Friday. If such release date falls on a holiday which falls
32 other than on a Saturday, Sunday, or Monday, the prisoner may be
33 released at the discretion of the warden or keeper on the day preceding
34 the holiday."; and

35 (3) The analysis at the beginning of the chapter is amended by
36 adding at the end thereof the following new item:

"4087. Discharge."

37 (u) Chapter 309 of title 18, United States Code, is repealed.

38 (v) Chapter 311 of title 18, United States Code, is amended to read
39 as follows:

1

"Chapter 311.—PAROLE**"Sec.****"4201. Parole Commission ; members.****"4202. Discretionary release on parole.****"4203. Mandatory release on parole.****"4204. Terms and incidents of parole.****"4205. Conditions of parole ; modification.****"4206. Duration of parole.****"4207. Revocation.****"4208. Finality of Parole Commission determinations.****"4209. Parole studies ; rules and regulations of Parole Commission.****"4210. Community treatment centers.**2 **"§ 4201. Parole Commission ; members**

3 "The Board of Parole, heretofore established in the Department
4 of Justice, shall henceforth be known as the Parole Commission and
5 shall consist of eight members appointed by the President, by and
6 with the advice and consent of the Senate. A member of the Board
7 of Parole on the effective date of this section shall become a member of
8 the Parole Commission whose term of office will expire on the same
9 date as his term of office as a member of the Board of Parole would
10 have expired. The term of office of a successor to any member shall
11 expire six years from the date of the expiration of the term for
12 which his predecessor was appointed, except that any person appointed
13 to fill a vacancy occurring prior to the expiration of the term for
14 which his predecessor was appointed shall be appointed for the re-
15 mainder of such term. Upon the expiration of his term of office,
16 a member of the Commission shall continue to act until his successor
17 has been appointed and qualified. The Attorney General shall from
18 time to time designate one of its members to serve as Chairman of
19 said Commission and delegate to him the necessary administrative
20 duties and responsibilities.

21 **"§ 4202. Discretionary release on parole**

22 "(a) **ELIGIBILITY.**—Every prisoner sentenced under chapter 23 to
23 a term of imprisonment totaling six months or more is eligible for
24 release on parole upon completion of the service of any minimum
25 term, or, if there is no minimum term, at any time.

26 "(b) **FIRST CONSIDERATION.**—The Parole Commission shall consid-
27 er parole of a prisoner serving a sentence of imprisonment totaling six
28 months duration or more at least 60 days prior to the expiration of any
29 minimum term, or, if there is no minimum term, at least 60 days prior
30 to the expiration of the sentence or of the first year of the sentence,
31 whichever is earlier.

32 "(c) **RECONSIDERATION.**—If parole is denied a prisoner serving a
33 term of imprisonment, the Parole Commission shall reconsider parole

1 at least once each year thereafter until parole is granted, unless it ap-
2 pears clear that a release order after an additional year would be in-
3 appropriate and reevaluation would be burdensome, in which case
4 the Commission may defer further hearing for not more than three
5 years.

6 “(d) CRITERIA.—Parole may be granted a prisoner who is or soon
7 will be eligible for parole if the Parole Commission, having regard to
8 the nature and circumstance of the offense and the history and char-
9 acteristics of the prisoner, is of the opinion that:

10 “(1) his release at that time would not unduly depreciate the
11 seriousness of his crime, undermine respect for law, or prevent the
12 administration of just punishment for the crime committed;

13 “(2) his release at that time would not fail to afford adequate
14 deterrence to criminal conduct;

15 “(3) there is no undue risk that he will commit further crimes
16 or otherwise fail to conform to such conditions or parole as would
17 be warranted under the circumstances;

18 “(4) termination of his educational or vocational training,
19 medical care, or other correctional treatment will not substantially
20 impair his capacity to lead a law-abiding life; and

21 “(5) his release at that time would not have a substantially
22 adverse effect on institutional discipline.

23 **“§ 4203. Mandatory release on parole**

24 “Every prisoner sentenced under chapter 23 to a term of impri-
25 sonment who is still in confinement on the date of the expiration of
26 his sentence shall then be released on parole.

27 **“§ 4204. Terms and incidents of parole**

28 “(a) TERMS.—The Parole Commission shall, prior to the release
29 of a prisoner serving a sentence imposed under chapter 23, set the
30 term of parole. The term of parole shall be set at not less than one
31 nor more than five years.

32 “(b) EARLY DISCHARGE FROM SUPERVISION OR TERMINATION.—The
33 Parole Commission may in its discretion discharge the parolee from
34 supervision or terminate the parole at any time after expiration of
35 one year of parole if warranted by the conduct of the parolee or the
36 interests of justice.

37 **“§ 4205. Conditions of parole; modification**

38 “(a) CONDITIONS.—The Parole Commission shall provide, as an
39 explicit condition of parole, that the parolee not commit another
40 federal, state, or local offense during the period for which the parole

1 remains subject to revocation. The Commission may also provide,
2 as further conditions of parole, any conditions which it considers ap-
3 propriate. When an alien prisoner subject to deportation is paroled, the
4 Commission may provide, as a condition of parole, that he be de-
5 ported and remain outside the United States.

6 “(b) **MODIFICATION.**—The Parole Commission may modify or en-
7 large the conditions of parole, or extend its term if less than the
8 maximum authorized term was previously imposed, at any time prior
9 to the expiration or termination of the term of parole.

10 **“§ 4206. Duration of parole**

11 “(a) **COMMENCEMENT; MULTIPLE SENTENCES.**—A period of parole
12 commences on the day the prisoner is released from imprisonment.
13 Periods of parole run concurrently with any federal, state, or local
14 periods of parole or probation for another offense to which the de-
15 fendant is subject or becomes subject during the period, except that
16 they do not run during any period in which the defendant is impris-
17 oned.

18 “(b) **DELAYED ADJUDICATION.**—The power of the Parole Commis-
19 sion to revoke parole for violation of a condition of parole extends
20 for the duration of the period provided in section 4204, and for any
21 period which is reasonably necessary for the adjudication of matters
22 arising before its expiration if some affirmative manifestation of an
23 intent to conduct a revocation hearing is made prior to the expiration
24 of the period.

25 **“§ 4207. Revocation**

26 “(a) **WARRANT.**—A warrant for the retaking of a parolee who has
27 allegedly violated a condition of his parole may be issued by the Parole
28 Commission or a member thereof at any time prior to the expiration
29 or termination of the term of parole. Any officer of any federal penal
30 or correctional institution, or any officer authorized to serve federal
31 criminal process, may execute such warrant by returning the parolee
32 to the custody of the Bureau of Corrections.

33 “(b) **PRELIMINARY APPEARANCE.**—A parolee retaken on a warrant
34 for violation of a condition of his parole shall be given written notice
35 of the alleged violation and shall be taken before the Parole Com-
36 mission or its representative without undue delay. The parolee shall
37 be given the opportunity to admit or deny the alleged violation, in
38 whole or in part, and to explain the circumstances of the alleged
39 violation. If the parolee does not admit the violation of a condition of
40 his parole, a revocation hearing before the Commission shall be

ordered; otherwise, a revocation hearing may be ordered in the discretion of the Commission or the Commission may proceed to disposition without a revocation hearing. If the parolee is being held in custody solely by authority of a warrant issued by the Commission, a preliminary hearing shall be held to determine whether there is probable cause to believe that the parolee has violated a condition of his parole, unless the Commission can promptly proceed to hold a revocation hearing.

“(c) REVOCATION HEARING.—At the revocation hearing it shall be determined whether the parolee has violated a condition of his parole. The parolee shall be informed of the evidence against him and shall be accorded the right to be present, to cross examine the adverse witnesses who appear at the hearing, and to present evidence on his own behalf. Any relevant evidence may be presented at the hearing, regardless of its admissibility under the rules governing admission of evidence at criminal trials. At the conclusion of the hearing the Parole Commission shall determine the factual issues and whether the parolee has violated a condition of his parole.

“(d) DISPOSITION.—If the parolee has not violated a condition of his parole, the warrant shall be withdrawn. If the parolee has violated a condition of his parole, the Parole Commission may continue him on the existing parole, with or without modifying or enlarging the conditions, or, if such continuation, modification, or enlargement is inappropriate in its opinion, may revoke parole and order the parolee imprisoned for the maximum term of the original sentence minus the portion of the original sentence served in confinement prior to the last parole, or for the contingent term of imprisonment provided in section 2302, whichever is the longer.

“(e) CREDIT UPON REIMPRISONMENT.—Credit shall be given for reimprisonment of a parolee beginning on the date he is returned to the custody of the Bureau of Corrections.

“(f) REPAROLE.—A prisoner who has been reimprisoned following revocation of parole may be reparaoled by the Parole Commission under the same provisions of this title that govern initial parole.

“§ 4208. Finality of Parole Commission determinations

“The federal courts shall not review, modify, or set aside, except for denial of constitutional right, the action of the Parole Commission regarding the release or deferment of release of a prisoner whose maximum term has not expired, the imposition or modification of conditions of a first or subsequent parole, the reimprisonment of a parolee

1 for violation of conditions of parole during the parole period, or any
2 other aspect of the parole process.

3 **“§ 4209. Parole studies; rules and regulations of Parole Com-**
4 **mission**

5 “(a) Upon commitment of a prisoner, the Director of the Bureau of
6 Corrections, under such regulations as the Attorney General may pre-
7 scribe, shall cause a complete study to be made of the prisoner and
8 shall furnish to the Parole Commission a summary report together
9 with any recommendations which in his opinion would be helpful in
10 determining the suitability of the prisoner for parole. This report may
11 include but shall not be limited to data regarding the prisoner’s pre-
12 vious delinquency or criminal experience, pertinent circumstances of
13 his social background, his capabilities, his mental and physical health,
14 and such other factors as may be considered pertinent. The Parole
15 Commission may make such other investigation as it may deem
16 necessary.

17 “It shall be the duty of the various probation officers and govern-
18 ment bureaus and agencies to furnish the Parole Commission infor-
19 mation concerning the prisoner, and, whenever not incompatible with
20 the public interest, their views and recommendations with respect to
21 the parole disposition of his case.

22 “(b) The Parole Commission may promulgate rules and regulations
23 for the supervision, discharge from supervision, or recommitment
24 of paroled prisoners.

25 **“§ 4210. Community treatment centers**

26 “The Parole Commission may require a parolee as conditions of
27 parole to reside in or participate in the program of a residential com-
28 munity treatment center, or both, for all or part of the period of
29 parole: *Provided*, That the Attorney General certifies that adequate
30 treatment facilities, personnel and programs are available. If the
31 Attorney General determines that the person’s residence in the cen-
32 ter or participation in its program, or both, should be terminated,
33 because the person can derive no further significant benefits from such
34 residence or participation, or both, or because his residence or partici-
35 pation adversely affects the rehabilitation of other residents or par-
36 ticipants, he shall so notify the Parole Commission, which shall
37 thereupon make such other provision with respect to the person as it
38 deems appropriate.

39 “A person residing in a residential community treatment center
40 may be required to pay such costs incident to residence as the Attorney
41 General deems appropriate.”

(w) (1) Title 18 of the United States Code is amended by adding after chapter 311 the following new chapter:

**“Chapter 312.—DETERMINATION AND EFFECT OF
INSANITY**

“Sec.

“4221. Procedure to determine existence of insanity at time of offense.

“4222. Hospitalization of a person acquitted by reason of insanity.

“4223. Definition for sections 4221 and 4222.

“4224. Hospitalization of a convicted person suffering from mental disease or defect.

“4225. Commitment following expiration of sentence.

**“§ 4221. Procedure to determine existence of insanity at time
of offense**

“(a) NOTICE REQUIREMENT.—Evidence of the defendant’s insanity at the time of the offense charged is not admissible at trial unless the defendant at the time of entering his plea of not guilty, or within 10 days thereafter or at such later time as the court may for good cause permit, files with the court a written notice of his intent to introduce such evidence.

“(b) PRE-TRIAL PSYCHIATRIC EXAMINATION.—Upon the filing of a notice as provided in subsection (a), the court may order that the defendant be examined by at least two qualified psychiatrists designated by the court. For the purpose of examination, the court may order that the defendant be committed for a reasonable period, but not more than 60 days, to the custody of the Attorney General, who shall hospitalize the defendant in a suitable mental hospital or other facility designated by the court.

“(c) PSYCHIATRIC REPORTS.—The psychiatrists designated by the court shall file with the court, and provide the defendant and the United States Attorney with copies of, reports which include the defendant’s history and present symptoms and the psychiatrists’ findings, a description of the psychological and medical tests employed and their results, and their opinions as to diagnosis, prognosis, and whether the defendant was insane at the time of the offense charged.

“(d) SPECIAL VERDICT.—If the issue of insanity is raised by notice as provided in subsection (a) or by evidence introduced at trial, on motion of the United States or of the defendant, or on the court’s own motion, the jury shall be instructed to find, or, in the event of a non-jury trial, the court shall find, the defendant:

“(1) guilty;

“(2) not guilty; or

“(3) not guilty by reason of insanity.

1 “(e) ADMISSIBILITY OF DEFENDANT’S STATEMENT AT TRIAL.—Any
2 statement made by the defendant during the course of a psychiatric
3 examination under this section is admissible at trial on the issue of in-
4 sanity, but no such statement is admissible on the issue of whether
5 the defendant engaged in the conduct constituting the offense charged.

6 **“§ 4222. Hospitalization of a person acquitted by reason of insanity**

7 “(a) DETERMINATION OF PRESENT MENTAL CONDITION OF ACQUITTED
8 PERSON.—When a person is found not guilty by reason of insanity
9 at the time of the offense charged, the court shall, upon notice to the
10 acquitted person and to the United States Attorney, hold a hearing
11 within a reasonable time to determine whether such person is presently
12 suffering from a mental disease or defect as a result of which his
13 release would create a substantial danger to himself or to the person
14 or property of others.

15 “(b) PSYCHIATRIC EXAMINATION AND COMMITMENT PENDING HEAR-
16 ING.—The court shall order that the acquitted person be examined by
17 at least two qualified psychiatrists designated by the court. The court
18 may order that the acquitted person be committed for a reasonable
19 period, but not more than 60 days, to the custody of the Attorney
20 General, who may hospitalize such person in a suitable mental institu-
21 tion or other facility designated by the court. In addition, the court
22 may make any order reasonably necessary to secure the appearance of
23 the acquitted person at the hearing.

24 “(c) PSYCHIATRIC REPORTS.—The psychiatrists designated by the
25 court shall file with the court, and provide the acquitted person and
26 the United States Attorney with copies of, reports which include the
27 acquitted person’s history and present symptoms and the psychiatrists’
28 findings, a description of the psychological and medical tests employed
29 and their results, and their opinions as to diagnosis, prognosis and
30 whether the acquitted person is presently suffering from a mental dis-
31 ease or defect as a result of which his release would create a substan-
32 tial danger to himself or to the person or property of others.

33 “(d) HEARING.—At the hearing the acquitted person shall be rep-
34 resented by counsel and, if such person is indigent, counsel shall be pro-
35 vided for him at the expense of the government. The acquitted person
36 shall be afforded an opportunity to testify, present evidence, subpoena
37 witnesses on his behalf and confront and cross-examine witnesses who
38 appear at the hearing.

39 “(e) DETERMINATION AND DISPOSITION.—If, after the hearing, the
40 court finds by a preponderance of the evidence that the acquitted per-

1 son is presently suffering from a mental disease or defect as a result
2 of which his release would create a substantial danger to himself or
3 to the person or property of others, the court shall commit such person
4 to the custody of the Attorney General, who shall hospitalize such
5 person for treatment in a suitable mental institution or other facility
6 until his mental condition is so improved that his release would not
7 create a substantial danger to himself or to the person or property of
8 others.

9 “(f) RELEASE FROM MENTAL INSTITUTION.—When the head of
10 the facility in which an acquitted person is hospitalized pursuant to
11 subsection (e) determines that such person has recovered from his
12 mental disease or defect to such an extent that his release would no
13 longer create a substantial danger to himself or to the person or prop-
14 erty of others, he shall promptly file a certificate so stating with the
15 clerk of the court which ordered the commitment, who shall send copies
16 thereof to such person’s attorney and to the United States Attorney.
17 The court shall order the release of the acquitted person or, on the
18 motion of the United States Attorney or on its own motion, shall hold
19 a hearing to determine whether he should be released. At such a hear-
20 ing, the acquitted person shall have the rights provided in subsection
21 (d). If, after such a hearing, the court finds by a preponderance of the
22 evidence that the acquitted person has recovered from his mental dis-
23 ease or defect to such an extent that his release would not create a sub-
24 stantial danger to himself or to the person or property of others, the
25 court shall order the immediate release of such person.

26 “(g) ANNUAL REPORTS BY MENTAL INSTITUTION.—The head of the
27 facility in which an acquitted person is hospitalized pursuant to
28 subsection (e) shall submit annual reports to the court which ordered
29 the commitment of such person, and send copies thereof to such
30 person’s attorney and to the United States Attorney, concerning the
31 mental condition of such person and recommendations concerning his
32 continued hospitalization. Upon receipt of any such report, the court
33 may order a hearing as provided in subsection (f), to determine
34 whether the acquitted person should be released and, if after such
35 hearing it makes the finding required by subsection (f), it shall order
36 the immediate release of such person.

37 “(h) HABEAS CORPUS RELIEF UNIMPAIRED.—Nothing contained in
38 this section shall preclude an acquitted person committed under this
39 section from establishing by writ of habeas corpus his eligibility for
40 release under the provisions of this section.

1 “(i) **USE OF NON-FEDERAL FACILITIES.**—The Attorney General or
2 his representative is authorized to enter into contracts with the sev-
3 eral States (including political subdivisions thereof) and private
4 agencies under which appropriate institutions and other facilities of
5 such States or agencies will be made available, on a reimbursable basis,
6 for the confinement, hospitalization, care, and treatment of persons
7 committed to the custody of the Attorney General pursuant to this
8 section.

9 **“§ 4223. Definition for sections 4221 and 4222**

10 As used in sections 4221 and 4222, ‘insanity’ means a mental disease
11 or defect as a result of which a person lacked the state of mind re-
12 quired as an element of the offense charged, and only such a mental
13 disease or defect.

14 **“§ 4224. Hospitalization of a convicted person suffering from**
15 **mental disease or defect**

16 “(a) **MOTION TO DETERMINE PRESENT MENTAL CONDITION OF CON-**
17 **VICTED DEFENDANT.**—A defendant found guilty of an offense against
18 the United States, or the United States Attorney, may, within ten
19 days after the defendant is found guilty, file a motion for, or the
20 court, at any time prior to the imposition of sentence, may order, a
21 hearing on the present mental condition of the defendant. The court
22 shall order a hearing on a motion filed by the defendant or by the
23 United States Attorney if there is reasonable cause to believe that the
24 defendant may be presently suffering from a mental disease or defect
25 for the treatment of which he is in need of custody, care, or treatment
26 in a mental institution.

27 “(b) **PSYCHIATRIC EXAMINATION.**—In connection with an order
28 filed pursuant to subsection (a), the court may order that the defend-
29 ant be examined as provided in section 4222(b).

30 “(c) **PSYCHIATRIC REPORTS.**—If the court orders a psychiatric exam-
31 ination of the defendant, the psychiatrists designated by the court to
32 conduct the examination shall file with the court, and provide the
33 defendant and the United States Attorney with copies of, reports
34 which include the defendant’s history and present symptoms and the
35 psychiatrists’ findings, a description of the psychological and medical
36 tests employed and their results, and their opinions as to diagnosis,
37 prognosis and whether the defendant is presently suffering from a
38 mental disease or defect as a result of which he is in need of custody,
39 care, or treatment in a mental institution.

40 “(d) **DETERMINATION OF MOTION.**—If, after the hearing, the court is
41 of the opinion that the defendant is presently suffering from a mental

1 disease or defect and should be committed to a mental institution for
2 custody, care, or treatment, the court may commit the defendant to the
3 custody of the Attorney General, for treatment in a suitable mental
4 hospital or other facility. Such a commitment constitutes a provisional
5 sentence to imprisonment for the maximum term authorized by chap-
6 ter 23 for the offense of which the defendant was found guilty.

7 “(e) RELEASE FROM MENTAL INSTITUTION.—When the head of the
8 facility in which the defendant is hospitalized pursuant to subsection
9 (d) determines that the defendant has recovered from his mental
10 disease or defect to such an extent that he is no longer in need of cus-
11 tody, care, or treatment in a mental institution, he shall promptly file
12 a certificate so stating with the clerk of the court which ordered the
13 commitment, who shall send a copy thereof to the defendant’s at-
14 torney and to the United States Attorney. If, at the time of the filing
15 of such a certificate, the sentence imposed pursuant to subsection (d)
16 has not expired, the court shall hold a hearing to determine whether
17 the sentence should be reduced. After such a hearing, the court may
18 order that the defendant be imprisoned for the remainder of his
19 sentence or for any lesser term, or may place the defendant on proba-
20 tion pursuant to chapter 21.

21 **“§ 4225. Commitment following expiration of sentence**

22 “(a) INSTITUTION OF PROCEEDING.—Whenever the head of the
23 facility in which a defendant is hospitalized pursuant to section 4224
24 certifies that a defendant whose sentence is about to expire is presently
25 suffering from a mental disease or defect as a result of which his re-
26 lease would create a substantial danger to himself or to the person or
27 property of others, and that suitable arrangements for the custody and
28 care of the defendant are not otherwise available, the Attorney Gen-
29 eral shall transmit the certificate to the clerk of the court for the dis-
30 trict in which the defendant is confined. The court shall, upon notice
31 to the defendant and the United States Attorney, order a hearing
32 within a reasonable time to determine whether the defendant is pres-
33 ently suffering from a mental disease or defect as a result of which
34 his release would create a substantial danger to himself or to the per-
35 son or property of others.

36 “(b) PSYCHIATRIC EXAMINATION.—In connection with an order filed
37 pursuant to subsection (a), the court shall order that the defendant be
38 examined by two qualified psychiatrists, one designated by the court
39 and one selected by the defendant.

40 “(c) PSYCHIATRIC REPORTS.—The psychiatrists chosen to examine the

1 defendant shall file with the court, and provide the defendant and the
 2 United States Attorney with, copies of reports which include the in-
 3 formation required under section 4222(c).

4 “(d) HEARING.—At the hearing the defendant shall have the rights
 5 provided in section 4222(d).

6 “(e) DETERMINATION AND DISPOSITION.—If, after the hearing, the
 7 court finds by a preponderance of the evidence that the defendant is
 8 presently suffering from a mental disease or defect as a result of which
 9 his release would create a substantial danger to himself or to the
 10 person or property of others, the court shall commit the defendant to
 11 the custody of the Attorney General.

12 “(f) TERMINATION OF CUSTODY BY RELEASE OR TRANSFER.—A com-
 13 mitment under this section shall continue until the person committed
 14 has recovered from his mental disease or defect to such an extent that
 15 his release would no longer create a substantial danger to himself or
 16 to the person or property of others, or until other suitable arrange-
 17 ments have been made for the custody and care of such person, which-
 18 ever event occurs first, at which time the Attorney General shall file
 19 with the court which ordered the commitment a certificate of the
 20 termination of the commitment and the reason therefor. For the
 21 purpose of this subsection, the Attorney General is authorized and
 22 empowered to apply for civil commitment pursuant to state law of a
 23 person committed to his custody pursuant to this section.

24 “(g) HABEAS CORPUS RELIEF UNIMPAIRED.—Nothing contained in
 25 this section shall preclude a person committed under this section from
 26 establishing by writ of habeas corpus his eligibility for release under
 27 the provisions of this section.”; and

28 (2) The analysis at the beginning of redesignated Part V of title
 29 18, United States Code, is amended by adding after the item for
 30 chapter 311 the following new item:

“312. Determination and effect of insanity----- 4221”.

31 (x) Chapter 313 of title 18, United States Code, is amended as
 32 follows:

33 (1) Section 4241 is amended by deleting the words “deduction for
 34 good time or” from the last paragraph;

35 (2) Section 4245 is amended by deleting the word “Prisons”
 36 wherever it appears and inserting in lieu thereof the word “Correc-
 37 tions”; and

38 (3) Section 4247 is amended by deleting the word “Prisons” and
 39 inserting in lieu thereof the word “Corrections”.

1 (y) (1) Chapter 314 of title 18, United States Code, is repealed;
2 and

3 (2) The analysis of the beginning of Part V of title 18, United
4 States Code, is amended by deleting

"314. Narcotic addicts----- 4251"

5 and inserting in lieu thereof

"314. Repealed".

6 (z) Chapter 315 of title 18, United States Code, is amended by
7 deleting the words "or of the Territory of Alaska" in section 4282.

8 (aa) Chapter 317 is amended by deleting the word "Prisons" in
9 section 4321 and inserting in lieu thereof the word "Corrections".

10 (bb) Chapter 401 of title 18, United States Code, is amended as
11 follows:

12 (1) Section 5002 is amended—

13 (A) by deleting the words "Board of Parole" and inserting in
14 lieu thereof the words "Parole Commission"; and

15 (B) by deleting the word "Prisons" and inserting in lieu thereof
16 the word "Corrections"; and

17 (C) by deleting the words "Chairman of the Youth Division,";
18 and

19 (2) Section 5003 is amended by deleting the word "criminal" before
20 the word "offenses" in subsection (a).

21 (cc) (1) Chapter 402 of title 18, United States Code, is repealed;
22 and

23 (2) The analysis at the beginning of Part VI of title 18, United
24 States Code, is amended by deleting

"402. Federal Youth Corrections Act----- 5005"

25 and inserting in lieu thereof

"402. Repealed".

26 (dd) Chapter 403 of title 18, United States Code, is amended as
27 follows:

28 (1) Sections 5031 to 5033 are amended to read as follows:

29 **"§ 5031. Definitions**

30 "For purposes of this chapter, a "juvenile" is a person who has not
31 attained his eighteenth birthday, and "juvenile delinquent" is a juve-
32 nile who has committed an offense.

33 **"§ 5032. Persons subject to delinquency proceedings**

34 "A juvenile who is alleged to have committed an offense, and who
35 is not surrendered to the authorities of a state, shall be proceeded
36 against as a juvenile delinquent, unless, upon motion of the United

1 States Attorney, the court, after hearing, is of the opinion that crim-
2 inal prosecution would better serve the interests of justice. In making
3 this determination the court should consider—

4 “(a) the nature and circumstances of the offense;

5 “(b) the likelihood of reform of the child prior to his ma-
6 jority;

7 “(c) whether confinement of the child in other than a juvenile
8 facility is needed for protection of the public; and

9 “(d) whether juvenile disposition will unduly depreciate the
10 seriousness of the juvenile’s conduct, undermine respect for law,
11 or fail to constitute a just response to the conduct of the juvenile.

12 **“§ 5033. Jurisdiction; jury trial precluded**

13 “(a) District courts of the United States shall have jurisdiction of
14 proceedings against juvenile delinquents. For such purposes, the court
15 may be convened at any time and place within the district in chambers
16 or otherwise.

17 “(b) Trial shall be without a jury.”;

18 (2) Section 5034 is amended—

19 (A) by adding the word “juvenile” before the word “delin-
20 quent” in the first paragraph;

21 (B) by deleting the word “violation” in the second paragraph
22 and inserting in lieu thereof the word “offense”; and

23 (C) by deleting the word “Prisons” in the fourth paragraph
24 and inserting in lieu thereof the word “Corrections”;

25 (3) Section 5035 is amended by deleting the words “violation of”
26 in the first paragraph and inserting in lieu thereof the words “offense
27 under”;

28 (4) Section 5036 is amended by deleting the word “Prisons” and
29 inserting the word “Corrections” in lieu thereof;

30 (5) Section 5037 is amended to read as follows:

31 **“§ 5037. Parole**

32 “A juvenile delinquent who has been committed may be paroled at
33 any time under such conditions and regulations as the Parole Commis-
34 sion deems proper if the Parole Commission is of the opinion that the
35 criteria of section 4202(d) are satisfied.”; and

36 (6) The analysis at the beginning of the chapter is amended—

37 (A) by deleting

“5032. Proceeding against juvenile delinquent.”

38 and inserting in lieu thereof

“5032. Persons subject to delinquency proceedings.”;

39 and

1 (B) by deleting

"5033. Jurisdiction ; written consent ; jury trial precluded."

2 and inserting in lieu thereof

"5033. Jurisdiction ; jury trial precluded."

3 (ee) (1) Title 18 of the United States Code is amended by adding
4 after chapter 403 the following new chapter :

5 **Chapter 405.—SPECIAL PROCEDURES FOR INITIAL**
6 **POSSESSION OF DRUGS**

"Sec.

"5101. Special procedures for initial possession of drugs.

7 **§ 5101. Special procedures for initial possession of drugs**

8 "(a) **SENTENCING.**—If a person found guilty of an offense under
9 section 1823 has not been found guilty of violating a federal or state
10 law relating to controlled substances prior to the commission of such
11 offense, the court may, without entering a judgment of conviction and
12 with the consent of such person, place him on probation for a period
13 not to exceed one year. The court may, in its discretion, without enter-
14 ing a judgment of conviction, dismiss the proceedings against such
15 person and discharge him from probation before the expiration of the
16 term of probation imposed and shall do so if, by the expiration of such
17 term, such person has not violated any condition of his probation. If
18 such person violates a condition of his probation, the court may proceed
19 in accordance with the provisions of part III of this title. A nonpublic
20 record of disposition under this section shall be retained by the Depart-
21 ment of Justice solely for the purpose of use by the courts in determin-
22 ing whether or not, in subsequent proceedings, such person qualifies
23 under this subsection. Disposition under this section shall not be
24 deemed a conviction for purposes of disqualifications or disabilities
25 imposed by law upon conviction of a crime (including the penalties
26 prescribed in sections 1821, 1822, 1823, and 1824 for second or subse-
27 quent convictions) or for any other purpose. Disposition under this
28 section may occur only once with respect to any person.

29 "(b) **EXPUNGING RECORDS.**—If the person whose case is disposed of
30 under this section was not more than twenty-one years old at the time
31 of the offense, he may apply to the court for an order to expunge from
32 all official records, except the non-public records referred to in sub-
33 section (a), all recordation relating to his arrest, the institution of
34 criminal proceedings against him, and the results thereof. If the court
35 determines, after hearing, that the case against such person was dis-
36 posed of under this section and that he was not more than twenty-one
37 years old at the time of the offense, it shall enter such order. The effect

1 of such order shall be to restore such person, in the contemplation of
 2 the law, to the status he occupied before his arrest or the institution
 3 of criminal proceedings against him. No person as to whom such or-
 4 der has been entered shall be held thereafter under any provision of
 5 any law to be guilty of perjury or otherwise making a false statement
 6 by reason of his failures to recite or acknowledge such arrest, or the
 7 institution of criminal proceedings against him, or the results thereof,
 8 in response to any inquiry made of him for any purpose.”; and

9 (2) The analysis at the beginning of redesignated part V of title
 10 18, United States Code, is amended by adding after the item for
 11 chapter 403 the following new item :

“405. Special procedures for initial possession of drugs. . . . 5101”.

12 AMENDMENT TO FEDERAL RULES OF CRIMINAL PROCEDURE

13 SEC. 280. Rule 18 of the Federal Rules of Criminal Procedure is
 14 amended to read as follows :

15 “RULE 18. PLACE OF PROSECUTION AND TRIAL

16 “Except as otherwise permitted by statute or by these rules, the
 17 prosecution shall be had in a district in which the offense was com-
 18 mitted. A prosecution for conspiracy may be brought in any district
 19 in which the conspiracy was entered into or in which any overt act
 20 in furtherance thereof was committed. The court shall fix the place
 21 of trial within the district with due regard to the convenience of the
 22 defendant and the witnesses.”

23 AMENDMENTS RELATING TO CUSTOMS DUTIES—TITLE 19, UNITED
 24 STATES CODE

25 ENTRY OF GOODS FOR LESS THAN LEGAL DUTY

26 SEC. 281. Whoever, being an officer of the revenue, knowingly admits
 27 to entry, any goods, wares, or merchandise, upon payment of less than
 28 the amount of duty legally due, is guilt of a Class A misdemeanor,
 29 and shall be removed from office.

30 COMPROMISE OF CUSTOMS LIABILITIES

31 SEC. 282. Whoever, being an officer of the United States, without
 32 lawful authority compromises or abates or attempts to compromise
 33 or abate any claim of the United States arising under the customs laws
 34 for any fine, penalty or forfeiture, or in any manner relieves or at-
 35 tempts to relieve any person, vessel, vehicle, merchandise or baggage
 36 therefrom, is guilty of a Class A misdemeanor.

37 AMENDMENT RELATING TO EDUCATION—TITLE 20, UNITED STATES
 38 CODE

39 SEC. 283. Section 1001 of the Act of September 2, 1958, as amended
 40 (72 Stat. 1602, 20 U.S.C. 581), is amended by deleting the words

1 “section 1001” in subsection (f) (3) and inserting in lieu thereof the
2 words “section 1343”.

3 AMENDMENTS RELATING TO FOOD AND DRUGS—TITLE 21,

4 UNITED STATES CODE

5 SEC. 284. Section 2 of the Act of May 6, 1970 (84 Stat. 202, 21
6 U.S.C. 135a), is amended by deleting the words “section 545” and
7 inserting in lieu thereof the words “section 1421”.

8 SEC. 285. Section 1 of the Act of August 11, 1955, as amended (69
9 Stat. 684, 21 U.S.C. 198a), is amended by deleting the words “section
10 545” and inserting in lieu thereof the words “section 1421”.

11 AMENDMENTS RELATING TO FOREIGN RELATIONS AND INTERCOURSE—

12 TITLE 22, UNITED STATES CODE

13 SMUGGLING GOODS INTO FOREIGN COUNTRIES

14 SEC. 286. Any person owning in whole or in part any vessel of the
15 United States who employs, or participates in or allows the employ-
16 ment of, such vessel for the purpose of smuggling, or attempting to
17 smuggle, or assisting in smuggling, any merchandise into the territory
18 of any foreign government in violation of the laws there in force, if
19 under the laws of such foreign government any penalty or forfeiture
20 is provided for violation of the laws of the United States respecting
21 the customs revenue, and any citizen of, or person domiciled in or any
22 corporation incorporated in, the United States, controlling or sub-
23 stantially participating in the control of any such vessel, directly or
24 indirectly, whether through ownership of corporate shares or other-
25 wise, and allowing the employment of said vessel for any such pur-
26 pose, and any person found, or discovered to have been on board
27 of any such vessel so employed and participating or assisting in any
28 such purpose, is guilty of a Class A misdemeanor.

29 It shall constitute an offense under this section to hire out or charter
30 a vessel if the lessor or charterer has knowledge or reasonable grounds
31 for belief that the lessee or person chartering the vessel intends to
32 employ such vessel for any of the purposes described in this section
33 and if such vessel is, during the time such lease or charter is in effect,
34 employed for any such purpose.

35 UNIFORM OF FRIENDLY NATION

36 SEC. 287. Whoever, within the jurisdiction of the United States, with
37 intent to deceive or mislead, wears any naval, military, police, or
38 other official uniform, decoration, or regalia of any foreign state,
39 nation, or government with which the United States is at peace, or

1 anything so nearly resembling the same as to be calculated to deceive,
2 is guilty of a Class B misdemeanor.

3 SWISS CONFEDERATION COAT OF ARMS

4 SEC. 288. Whoever, whether a corporation, partnership, unincor-
5 porated company, association, or person within the United States,
6 willfully uses as a trade mark, commercial label, or portion thereof,
7 or as an advertisement or insignia for any business or organization
8 or for any trade or commercial purpose, the coat of arms of the
9 Swiss Confederation, consisting of an upright white cross with equal
10 arms and lines on a red ground, or any simulation thereof, is guilty
11 of a Class B misdemeanor.

12 This section shall not make unlawful the use of any such design
13 or insignia which was lawful on August 31, 1948.

14 STRENGTHENING ARMED VESSEL OF FOREIGN NATION

15 SEC. 289. Whoever, within the United States, increases or augments
16 the force of any ship of war, cruiser, or other armed vessel which, at
17 the time of her arrival within the United States, was a ship of war,
18 or cruiser, or armed vessel, in the service of any foreign prince or
19 state, or of any colony, district, or people, the same being at war with
20 any foreign prince or state, or of any colony, district, or people, with
21 whom the United States is at peace, by adding to the number of the
22 guns of such vessel, or by changing those on board of her for guns
23 of a larger caliber, or by adding thereto any equipment solely applica-
24 ble to war, is guilty of a Class A misdemeanor.

25 ARMING VESSEL AGAINST FRIENDLY NATION

26 SEC. 290. Whoever, within the United States, furnishes, fits
27 out, or arms, or attempts to furnish, fit out or arm, any vessel, with
28 intent that such vessel shall be employed in the service of any foreign
29 prince, or state, or of any colony, district, or people, to cruise, or
30 commit hostilities against the subjects, citizens, or property of any
31 foreign prince or state, or of any colony, district or people with whom
32 the United States is at peace; or

33 Whoever issues or delivers a commission within the United States
34 for any vessel, to the intent that she may be so employed—

35 Is guilty of a Class A misdemeanor.

36 FORFEITURE OF VESSEL ARMED AGAINST FRIENDLY NATION

37 SEC. 291. Every vessel used in violation of section 290, her tackle,
38 apparel, and furniture, together with all materials, arms, ammuni-
39 tions, and stores which may have been procured for the building and
40 equipment thereof, shall be forfeited, one half to the use of the
41 informer and the other half to the use of the United States.

DETENTION OF ARMED VESSEL

SEC. 292. During a war in which the United States is a neutral nation, the President, or any person authorized by him, may detain any armed vessel owned wholly or in part by citizens of the United States, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person having charge of such vessel, shall furnish proof satisfactory to the President, or to the person duly authorized by him, that the vessel will not be employed to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with which the United States is at peace, and that the said vessel will not be sold or delivered to any belligerent nation, or to any agent, officer, or citizen of such nation, by them or any of them, within the jurisdiction of the United States, or upon the high seas.

VERIFIED STATEMENTS AS PREREQUISITE TO VESSEL'S DEPARTURE

SEC. 293. During a war in which the United States is a neutral nation, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall, in addition to the facts required by sections 91, 92, and 94 of Title 46 to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, deliver to the collector of customs for the district wherein such vessel is then located a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same manner and under the same conditions deliver to the collector like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively.

The Secretary of the Treasury is authorized to promulgate regulations upon compliance with which vessels engaged in the coastwise trade of fisheries or used solely for pleasure may be relieved from complying with this section.

DEPARTURE OF VESSEL FORBIDDEN FOR FALSE STATEMENTS

1
2 SEC. 294. Whenever it appears that the vessel is not entitled to clear-
3 ance or whenever there is reasonable cause to believe that the additional
4 statements under oath required in section 293 of the Criminal Code
5 Reform Act of 1973 (22 U.S.C.) are false, the collector of customs
6 for the district in which the vessel is located may, subject to review
7 by the head of the department or agency charged with the administra-
8 tion of laws relating to clearance of vessels, refuse clearance to any
9 vessel, domestic or foreign, and by formal notice served upon the
10 owners, master, or person or persons in command or charge of any
11 domestic vessel for which clearance is not required by law, forbid the
12 departure of the vessel from the port or from the United States. It
13 shall thereupon be unlawful for the vessel to depart.

SEC. 295. DEPARTURE OF VESSEL FORBIDDEN IN AID OF NEUTRALITY

14
15 During a war in which the United States is a neutral nation, the
16 President, or any person authorized by him, may withhold clearance
17 from or to any vessel, domestic or foreign, or, by service of formal
18 notice upon the owner, master, or person in command or in charge of
19 any domestic vessel not required to secure clearances, may forbid its
20 departure from port or from the United States, whenever there is rea-
21 sonable cause to believe that such vessel is about to carry fuel, arms,
22 ammunition, men, supplies, dispatches, or information to any warship,
23 tender, or supply ship of a foreign belligerent nation in violation of
24 the laws, treaties, or obligations of the United States under the law of
25 nations. It shall thereupon be unlawful for such vessel to depart.

EXPORTATION OF ARMS, LIQUORS AND NARCOTICS TO PACIFIC ISLANDS

26
27 SEC. 296. (a) Whoever, being subject to the authority of the United
28 States, gives, sells, or otherwise supplies any arms, ammunition, ex-
29 plosive substance, intoxicating liquor, or opium to any aboriginal
30 native of any of the Pacific Islands lying within the twentieth parallel
31 of north latitude and fortieth parallel of south latitude, and the one
32 hundred and twentieth meridian of longitude west and one hundred
33 and twentieth meridian of longitude east of Greenwich, not being in
34 the possession or under the protection of any civilized power, is guilty
35 of a Class B misdemeanor, except that a term of imprisonment for
36 violation of this section shall not exceed three months.

37 In addition to such punishment, all articles of a similar nature to
38 those in respect to which an offense has been committed, found in the
39 possession of the offender, may be declared forfeited.

40 If it appears to the court that such opium, wine, or spirits have been

1 given bona fide for medical purposes, it shall be lawful for the court to
2 dismiss the charge.

3 (b) All offenses against this section committed on any of said islands
4 or on the waters, rocks, or keys adjacent thereto, shall be deemed com-
5 mitted on the high seas on board a merchant ship or vessel belonging
6 to the United States.

7 FINANCIAL TRANSACTIONS WITH FOREIGN GOVERNMENTS

8 SEC. 297. Whoever, within the United States, purchases or sells the
9 bonds, securities, or other obligations of any foreign government or
10 political subdivision thereof or any organization or association acting
11 for or on behalf of a foreign government or political subdivision
12 thereof, issued after April 13, 1934, or makes any loan to such foreign
13 government, political subdivision, organization or association, except
14 a renewal or adjustment of existing indebtedness, while such govern-
15 ment, political subdivision, organization or association, is in default
16 in the payment of its obligations, or any part thereof, to the United
17 States, is guilty of a Class A misdemeanor.

18 This section is applicable to individuals, partnerships, corpora-
19 tions, or associations other than public corporations created by or
20 pursuant to special authorizations of Congress, or corporations in
21 which the United States has or exercises a controlling interest through
22 stock ownership or otherwise. While any foreign government is a
23 member both of the International Monetary Fund and of the Inter-
24 national Bank for Reconstruction and Development, this section shall
25 not apply to the sale or purchase of bonds, securities, or other obliga-
26 tions of such government or any political subdivision thereof or of any
27 organization or association acting for or on behalf of such government
28 or political subdivision, or to making of any loan to such government,
29 political subdivision, organization, or association.

30 SAFE CONDUCT VIOLATION

31 SEC. 298. Whoever violates any safe conduct or passport duly ob-
32 tained and issued under authority of the United States is guilty of a
33 Class A misdemeanor.

34 PROTECTION OF FOREIGN OFFICIALS AND OFFICIAL GUESTS

35 SEC. 299. (a) Whoever willfully intimidates, coerces, threatens, or
36 harasses a foreign official or an official guest, or willfully obstructs a
37 foreign official in the performance of his duties, is guilty of a Class
38 B misdemeanor.

39 (b) Whoever within the United States but outside the District of
40 Columbia and within one hundred feet of any building or premises

1 belonging to or used or occupied by a foreign government or by a
2 foreign official for diplomatic or consular purposes, or as a mission
3 to an international organization, or as a residence of a foreign official,
4 or belonging to or used or occupied by an international organization
5 for official business or residential purposes, publicly—

6 (1) parades, pickets, displays any flag, banner, sign, placard,
7 or device, or utters any words, phrase, sound, or noise, for the pur-
8 pose of intimidating, coercing, threatening, or harassing any for-
9 eign official or obstructing him in the performance of his duties,
10 or

11 (2) congregates with two or more other persons with the intent
12 to perform any of the aforesaid acts, or to violate section 1611,
13 1612, 1613, or 1614 of title 18 where there is jurisdiction of the
14 offense under section 1611(c)(2)(B), (D), or (E), or to violate
15 section 1621, 1622, or 1623 of title 18 where there is jurisdiction
16 under section 1621(c)(2)(B), (D) or (E), or to violate sub-
17 section (a) of this section,

18 is guilty of a Class B misdemeanor.

19 (c) For the purpose of this section—

20 (1) “foreign official” means—

21 (A) a Chief of State or the political equivalent, President,
22 Vice President, Prime Minister, Ambassador, Foreign Min-
23 ister, or other officer of cabinet rank or above of a foreign
24 government or the chief executive officer of an international
25 organization, or any person who has previously served in
26 such capacity, and any member of his family, while in the
27 United States; and

28 (B) any person of a foreign nationality who is duly noti-
29 fied to the United States as an officer or employee of a foreign
30 government or international organization, and who is in
31 the United States on official business, and any member of
32 his family whose presence in the United States is in connec-
33 tion with the presence of such officer or employee;

34 (2) “foreign government” means the government of a foreign
35 country, irrespective of recognition by the United States;

36 (3) “international organization” means a public international
37 organization designated as such pursuant to section 1 of the In-
38 ternational Organizations Immunities Act (22 U.S.C. 288);

39 (4) “family” includes (A) a spouse, parent, brother or sister,
40 child, or person to whom the foreign official stands in loco parentis,

1 or (B) any other person living in his household and related to
2 the foreign official by blood or marriage; and

3 (5) "official guest" means a citizen or national of a foreign
4 country present in the United States as an official guest of the
5 government of the United States pursuant to designation as such
6 by the Secretary of State.

7 (d) Nothing contained in this section shall be construed or applied
8 so as to abridge the exercise of rights guaranteed under the first amend-
9 ment to the Constitution of the United States.

10 SEC. 300. Section 2 of the Act of June 8, 1938, as amended (52 Stat.
11 632, 22 U.S.C. 612), is amended by deleting the words "(other than
12 contributions the making of which is prohibited under the terms of
13 section 613 of Title 18)" in subsection (a) (8).

14 SEC. 301. Section 4 of the Act of March 10, 1950, as amended (64
15 Stat. 13, 22 U.S.C. 1623), is amended by deleting the words "section
16 1001" in subsection (e) and inserting in lieu thereof the words "section
17 1343".

18 SEC. 302. Section 635 of the Act of September 4, 1961, as amended
19 (75 Stat. 456, 22 U.S.C. 2395), is amended by deleting the words "sec-
20 tion 955 of title 18 of the United States Code" in subsection (j) and in-
21 serting in lieu thereof the words "section 297 of the Criminal Code
22 Reform Act of 1973 (22 U.S.C.)".

23 SEC. 303. Section 2 of the Act of June 29, 1955, as added by section 4
24 of the Act of August 27, 1964 (78 Stat. 610, 22 U.S.C. 2667), is
25 amended by deleting the words "section 111 or 112 of title 18, United
26 States Code, in their presence" and inserting in lieu thereof the words
27 in their presence section 1302, 1357, or 1358 of title 18, or section
28 1611, 1612, 1613, 1614, or 1616 of title 18 where there is jurisdiction
29 of the offense under section 1611(c) (2), or section 1621, 1622, or 1623
30 of title 18 where there is jurisdiction of the offense under section 1621
31 (c) (2), or section 1813 of title 18 if the offense occurs during the com-
32 mission of or during the immediate flight from the commission of any
33 of these crimes,".

34 SEC. 304. Section 9 of the Act of August 1, 1956 (70 Stat. 891, 22
35 U.S.C. 2676) is amended by deleting the words "section 431 of title 18"
36 and inserting in lieu thereof the words "section 9110 of title 5".

1 AMENDMENTS RELATING TO INDIANS—TITLE 25, UNITED STATES CODE

2 INDIAN CONTRACTS FOR SERVICES GENERALLY

3 SEC. 305. Whoever receives money contrary to sections 81 and 82 of
4 title 25 is guilty of a Class B misdemeanor, and shall also forfeit the
5 money so received.

6 INDIAN ENROLLMENT CONTRACTS

7 SEC. 306. Unless the United States consents, all contracts made with
8 any person or persons, applicants for enrollment as citizens in the Five
9 Civilized Tribes for compensation for services in relation thereto,
10 shall be void, and—

11 Whoever collects or receives any moneys from any such applicants
12 for citizenship, is guilty of a Class B misdemeanor.

13 COUNTERFEITING INDIAN ARTS AND CRAFTS BOARD TRADEMARK

14 SEC. 307. Whoever counterfeits or colorably imitates any Govern-
15 ment trade mark used or devised by the Indian Arts and Crafts Board
16 in the Department of the Interior as provided in section 305a of Title
17 25, or, except as authorized by the Board, affixes any such Government
18 trade mark, or knowingly, willfully, and corruptly affixes any repro-
19 duction, counterfeit, copy, or colorable imitation thereof upon any
20 products, or to any labels, signs, prints, packages, wrappers, or re-
21 ceptacles intended to be used upon or in connection with the sale of
22 such products—

23 Is guilty of a Class B misdemeanor; and shall be enjoined from
24 further carrying on the act or acts complained of.

25 MISREPRESENTATION IN SALE OF PRODUCTS

26 SEC. 308. Whoever willfully offers or displays for sale any goods,
27 with or without any Government trade mark, as Indian products or
28 Indian products of a particular Indian tribe or group, resident within
29 the United States, when such person knows such goods are not Indian
30 products or are not Indian products of the particular Indian tribe or
31 group, is guilty of a Class B misdemeanor.

32 STATE JURISDICTION OVER OFFENSES COMMITTED BY OR AGAINST INDIANS

33 IN THE INDIAN COUNTRY

34 SEC. 309. (a) Each of the States listed in the following table shall
35 have jurisdiction over offenses committed by or against Indians in the
36 areas of Indian country listed opposite the name of the State to the
37 same extent that such State has jurisdiction over offenses committed
38 elsewhere within the State, and the criminal laws of such State shall
39 have the same force and effect within such Indian country as they
40 have elsewhere within the State:

STATE	INDIAN COUNTRY AFFECTED
Alaska-----	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California-----	All Indian country within the State.
Minnesota-----	All Indian country within the State, except the Red Lake Reservation.
Nebraska-----	All Indian country within the State.
Oregon-----	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin-----	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The areas listed in subsection (a) are excluded from the special jurisdiction of the United States described in section 203 of title 18.

(d) As used in this section, the term "Indian country" includes

(1) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including any right-of-way running through a reservation;

(2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without a state;

(3) all Indian allotments, the Indian titles to which have not been extinguished, including any right-of-way running through such an allotment; and

(4) all land outside the limits of any Indian reservation, the title to which is held in trust by the United States for any Indian tribe, band, community, group, or pueblo.

1 DESTROYING BOUNDARY AND WARNING SIGNS

2 SEC. 310. Whoever willfully destroys, defaces, or removes any sign
3 erected by an Indian tribe, or a Government agency (1) to indicate
4 the boundary of an Indian reservation or of any Indian country as
5 defined in section 203 of title 18 or in section 309 of the Criminal
6 Code Reform Act of 1973 (25 U.S.C.) or (2) to give notice that
7 hunting, trapping, or fishing is not permitted thereon without lawful
8 authority or permission, is guilty of a Class B misdemeanor.

9 HUNTING, TRAPPING, OR FISHING ON INDIAN LAND

10 SEC. 311. Whoever, without lawful authority or permission, will-
11 fully and knowingly goes upon any land that belongs to any Indian
12 or Indian tribe, band, or group and either is held by the United
13 States in trust or is subject to a restriction against alienation imposed
14 by the United States, or upon any lands of the United States that
15 are reserved for Indian use, for the purpose of hunting, trapping,
16 or fishing thereon, or for the removal of game, peltries, or fish there-
17 from, is guilty of a Class B misdemeanor, except that he shall be im-
18 prisoned not more than ninety days; and all game, fish, and peltries
19 in his possession shall be forfeited.

20 SEC. 312. Section 403 of the Act of April 11, 1968 (82 Stat. 79, 25
21 U.S.C. 1323), is amended by deleting the words "section 1162 of title
22 18 of the United States Code" in subsection (a) and inserting in lieu
23 thereof the words "section 309 of the Criminal Code Reform Act of
24 1973 (25 U.S.C.)".

25 AMENDMENTS TO THE INTERNAL REVENUE CODE—TITLE 26, UNITED
26 STATES CODE

27 SEC. 313. Section 4182 of the Internal Revenue Code of 1954, as
28 amended (68A Stat. 490, 26 U.S.C. 4182), is amended by deleting the
29 words "sections 922(b)(5) and 923(g) of title 18, United States
30 Code" in subsection (c) and inserting in lieu thereof the words "sec-
31 tions 247(b)(5) and 248(g) of the Criminal Code Reform Act of
32 1973 (15 U.S.C. and)".

33 SEC. 314. Section 4946 of the Internal Revenue Code of 1954, as
34 added by section 101(b) of the Act of December 30, 1969 (83 Stat.
35 515, 26 U.S.C. 4946), is amended by deleting the words "section 202(a)
36 of title 18" in subsection (c) and inserting in lieu thereof the words
37 "section 9101(a) of title 5".

38 SEC. 315. Section 6531 of the Internal Revenue Code of 1954, as
39 amended (68A Stat. 815, 26 U.S.C. 6531), is amended by deleting

the words "section 371" in paragraph (8) and inserting in lieu thereof the words "section 1002".

AMENDMENTS RELATING TO INTOXICATING LIQUORS—TITLE 27, UNITED STATES CODE

ENFORCEMENT, REGULATIONS, AND SCOPE

SEC. 316. (a) The Secretary of the Treasury shall enforce the provisions of sections 316 to 320 of the Criminal Code Reform Act of 1973 (27 U.S.C. to). Regulations to carry out these provisions shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

(b) Sections 316 to 320 shall not apply to the Canal Zone.

TRANSPORTATION INTO STATE PROHIBITING SALE

SEC. 317. Whoever imports, brings, or transports any intoxicating liquor into any State, Territory, District, or Possession in which all sales, except for scientific, sacramental, medicinal, or mechanical purposes, of intoxicating liquor containing more than 4 per centum of alcohol by volume or 3.2 per centum of alcohol by weight are prohibited, otherwise than in the course of continuous interstate transportation through such State, Territory, District, or Possession or attempts so to do, or assists in so doing,

(1) if such liquor is not accompanied by such permits or licenses therefor as may be required by the laws of such State, Territory, District, or Possession or

(2) if all importation, bringing, or transportation of intoxicating liquor into such State, Territory, District, or Possession is prohibited by the laws thereof,

is guilty of a Class A misdemeanor.

In the enforcement of this section, the definition of intoxicating liquor contained in the laws of the respective States, Territories, Districts, or Possessions shall be applied, but only to the extent that sales of such intoxicating liquor (except for scientific, sacramental, medicinal, and mechanical purposes) are prohibited therein.

MARKS AND LABELS ON PACKAGES

SEC. 318. Whoever knowingly ships into any place within the United States any package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such shipment is accompanied by copy of a bill of lading, or other document showing the name of the consignee, the nature of its

contents, and the quantity contained therein, is guilty of a Class A misdemeanor.

DELIVERY TO CONSIGNEE

SEC. 319. Whoever, being an officer, agent, or employee of any railroad company, express company, or other common carrier, knowingly delivers to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, or other fermented liquor or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, which has been shipped into any place within the United States, is guilty of a Class A misdemeanor.

C.O.D. SHIPMENTS PROHIBITED

SEC. 320. Any railroad or express company, or other common carrier which, or any person who, in connection with the transportation of any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, into any State, Territory, District or Possession of the United States, which prohibits the delivery or sale therein of such liquor, collects the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or in any manner acts as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, is guilty of a Class A misdemeanor.

AMENDMENTS RELATING TO JUDICIARY AND JUDICIAL PROCEDURE—TITLE
28, UNITED STATES CODE

SEC. 321. (a) Chapter 21 of title 28, United States Code, is amended as follows:

(1) The following new sections are added at the end thereof:

“§ 461. Purchase of claims for fees by judges

“Whoever, being a judge of any court of the United States or a Territory or Possession thereof directly or indirectly purchases, at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal or any other officer of such court, shall be fined not more than \$1,000.

“§ 462. Nepotism in appointment of receiver or trustee

“Whoever, being a judge of any court of the United States, appoints

1 as receiver, or trustee, any person related to such judge by consanguin-
2 ity, or affinity, within the fourth degree—

3 “Is guilty of a Class A misdemeanor.”;

4 (2) Section 460 is amended by adding after the words “Sections 452–
5 459” the words “and 461–462”; and

6 (3) The analysis at the beginning of the chapter is amended by add-
7 ing at the end thereof the following new items :

“461. Purchase of claims for fees by judges.

“462. Nepotism in appointment of receiver or trustee.”

8 (b) Chapter 33 of title 28, United States Code, is amended as follows :

9 (1) A new section is added at the end thereof as follows :

10 **“§ 538. False advertising or misuse of the name of the Federal**
11 **Bureau of Investigation**

12 “Whoever, except with the written permission of the Director of the
13 Federal Bureau of Investigation, knowingly uses the words “Federal
14 Bureau of Investigation” or the initials “F.B.I.,” or any colorable imi-
15 tation of such words or initials, in connection with any advertisement,
16 circular, book, pamphlet or other publication, play, motion picture,
17 broadcast, telecast, or other production, in a manner reasonably cal-
18 culated to convey the impression that such advertisement, circular,
19 book, pamphlet or other publication, play, motion picture, broadcast,
20 telecast, or other production, is approved, endorsed, or authorized by
21 the Federal Bureau of Investigation—

22 “Shall be punished as follows: a corporation, partnership, business
23 trust, association, or other business entity, by a fine of not more than
24 \$10,000; an officer or member thereof participating or knowingly
25 acquiescing in such violation or any individual violating this section
26 is guilty of a Class A misdemeanor.

27 “This section shall not make unlawful the use of any name or title
28 which was lawful on June 25, 1948.

29 “A violation of this section may be enjoined at the suit of the United
30 States Attorney, upon complaint by any duly authorized representa-
31 tive of any department or agency of the United States.”; and

32 (2) The analysis at the beginning of the chapter is amended by
33 adding at the end thereof the following new item :

“538. False advertising or misuse of the name of the Federal Bureau of
Investigation.”

34 (c) Chapter 57 of title 28, United States Code, is amended as follows :

35 (1) The following new sections are added at the end thereof :

36 **“§ 964. Purchase of claims for fees by court officials**

1 “Whoever, being a clerk or deputy clerk of any court of the United
 2 States or a Territory or Possession thereof, or a United States district
 3 attorney, assistant attorney, marshal, deputy marshal, magistrate, or
 4 other person holding any office or employment, or position of trust or
 5 profit under the United States, directly or indirectly purchases at less
 6 than the full face value thereof, any claim against the United States
 7 for the fee, mileage, or expenses of any witness, juror, deputy marshal,
 8 or any other officer of such court, shall be fined not more than \$1,000.

9 **“§ 965. Receiver mismanaging property**

10 “Whoever, being a receiver, trustee, or manager in possession of any
 11 property in any cause pending in any court of the United States, will-
 12 fully fails to manage and operate such property according to the re-
 13 quirements of the valid laws of the State in which such property shall
 14 be situated, in the same manner that the owner or possessor thereof
 15 would be bound to do if in possession thereof, is guilty of a Class A
 16 misdemeanor.

17 **“§ 966. Filing of documents by Clerk of United States District**
 18 **Court**

19 “Whoever, being a clerk of a district court of the United States,
 20 willfully refuses or neglects to make or forward any report, certificate,
 21 statement, or document as required by law, is guilty of a Class A
 22 misdemeanor.”; and

23 (2) The analysis at the beginning of the chapter is amended by add-
 24 ing at the end thereof the following new items:

“964. Purchase of claims for fees by court officials.

“965. Receiver mismanaging property”

“966. Filing of documents by Clerk of United States District Court.”

25 (d) Chapter 175 of title 28, United States Code, is amended as
 26 follows:

27 (1) Section 2901 is amended by deleting the words “section 1 of”
 28 in subsection (e); and

29 (2) Section 2902 is amended by deleting the words “sections 751 and
 30 752” in subsection (e) and inserting in lieu thereof the words “sec-
 31 tion 1314”.

32 **AMENDMENT RELATING TO LABOR—TITLE 29, UNITED STATES CODE**

33 **SEC. 322.** Section 15 of the Act of December 29, 1970 (84 Stat. 1606,
 34 29 U.S.C. 664), is amended by deleting the words “section 1905 of
 35 Title 18” and inserting in lieu thereof the words “section 9301 of
 36 title 5”.

AMENDMENTS RELATING TO MONEY AND FINANCE—TITLE 31,
UNITED STATES CODE

ISSUANCE OF CIRCULATING OBLIGATIONS OF LESS THAN \$1

SEC. 323. Whoever makes, issues, circulates, or pays out any note, check, memorandum, token, or other obligation for a less sum than \$1, intended to circulate as money or to be received or used in lieu of lawful money of the United States, is guilty of a Class B misdemeanor.

COINS AS SECURITY FOR LOANS

SEC. 324. Whoever lends or borrows money or credit upon the security of such coins of the United States as the Secretary of the Treasury may from time to time designate by proclamation published in the Federal Register, during any period designated in such a proclamation, is guilty of a Class A misdemeanor.

IMITATING OBLIGATIONS OR SECURITIES; ADVERTISEMENTS

SEC. 325. Whoever designs, engraves, prints, makes, or executes, or utters, issues, distributes, circulates, or uses any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any obligation or security of the United States issued under or authorized by any Act of Congress or writes, prints, or otherwise impresses upon or attaches to any such instrument; obligation, or security, or any coin of the United States, any business or professional card, notice, or advertisement, or any notice or advertisement whatever, shall be fined not more than \$500.

PRINTING AND FILMING OF UNITED STATES AND FOREIGN OBLIGATIONS AND
SECURITIES

SEC. 326. Notwithstanding the provisions of sections 1421, 1741, and 1742, of title 18, United States Code, and of sections 325, 328, 329, and 330 of the Criminal Code Reform Act of 1973 (31 U.S.C.), the following are permitted:

(1) the printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of—

(A) postage stamps of the United States,

(B) revenue stamps of the United States,

(C) any other obligation or other security of the United States, and

(D) postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation,

1 for philatelic, numismatic, educational, historical, or newsworthy
2 purposes in articles, books, journals, newspapers, or albums (but
3 not for advertising purposes, except illustrations of stamps and
4 paper money in philatelic or numismatic advertising of legiti-
5 mate numismatists and dealers in stamps or publishers of or
6 dealers in stamps or publishers of or dealers in philatelic or
7 numismatic articles, books, journals, newspapers, or albums).
8 Illustrations permitted by the foregoing provisions of this section
9 shall be made in accordance with the following conditions—

10 (i) all illustrations shall be in black and white, except that
11 illustrations of postage stamps issued by the United States
12 or by any foreign government may be in color;

13 (ii) all illustrations (including illustrations of uncanceled
14 postage stamps in color) shall be of a size less than three-
15 fourths or more than one and one-half, in linear dimension,
16 of each part of any matter so illustrated which is covered
17 by subparagraph (A), (B), (C), or (D) of this paragraph,
18 except that black and white illustrations of postage and rev-
19 enue stamps issued by the United States or by any foreign
20 government and colored illustrations of canceled postage
21 stamps issued by the United States may be in the exact linear
22 dimension in which the stamps were issued; and

23 (iii) the negatives and plates used in making the illustra-
24 tions shall be destroyed after their final use in accordance
25 with this section.

26 (2) the making or importation, but not for advertising purposes
27 except philatelic advertising, of motion-picture films, microfilms,
28 or slides, for projection upon a screen or for use in telecasting,
29 of postage and revenue stamps and other obligations and securi-
30 ties of the United States, and postage and revenue stamps, notes,
31 bonds, and other obligations or securities of any foreign govern-
32 ment, bank, or corporation. No prints or other reproductions
33 shall be made from such films or slides, except for the purposes
34 of paragraph (1), without the permission of the Secretary of
35 the Treasury.

36 For the purposes of this section the term “postage stamp” includes
37 postage meter stamps.

38 DEPOSITARIES FAILING TO SAFEGUARD DEPOSITS

39 SEC. 327. If the Treasurer of the United States or any public
40 depository fails to keep safely all moneys deposited by any dis-

1 bursing officer or disbursing agent, as well as all moneys deposited
2 by any receiver, collector, or other person having money of the
3 United States, he is guilty of a Class A misdemeanor.

4 TOKENS OR PAPER USED AS MONEY

5 SEC. 328. (a) Whoever, being 18 years of age or over, not lawfully
6 authorized, makes, issues, or passes any coin, card, token, or device
7 in metal, or its compounds, intended to be used as money, or whoever,
8 being 18 years of age or over, with intent to defraud, makes, utters,
9 inserts, or uses any card, token, slug, disk, device, paper, or other
10 thing similar in size and shape to any of the lawful coins or other
11 currency of the United States or any coin or other currency not
12 legal tender in the United States, to procure anything of value, or
13 the use or enjoyment of any property or service from any automatic
14 merchandise vending machine, postage-stamp machine, turnstile,
15 fare box, coinbox telephone, parking meter or other lawful recep-
16 tacle, depository, or contrivance designed to receive or to be operated
17 by lawful coins or other currency of the United States, is guilty of a
18 Class A misdemeanor.

19 (b) Whoever manufactures, sells, offers, or advertises for sale, or
20 exposes or keeps with intent to furnish or sell any token, slug, disk,
21 device, paper, or other thing similar in size and shape to any of the
22 lawful coins or other currency of the United States, or any token, disk,
23 paper, or other device issued or authorized in connection with ration-
24 ing or food and fiber distribution by any agency of the United States,
25 with knowledge or reason to believe that such tokens, slugs, disks,
26 devices, papers, or other things are intended to be used unlawfully or
27 fraudulently to procure anything of value, or the use or enjoyment
28 of any property or service from any automatic merchandise vending
29 machine, postage-stamp machine, turnstile, fare box, coinbox tele-
30 phone, parking meter, or other lawful receptacle, depository, or con-
31 trivance designed to receive or to be operated by lawful coins or other
32 currency of the United States is guilty of a Class A misdemeanor.

33 (c) "Knowledge or reason to believe", within the meaning of para-
34 graph (b) of this section, may be shown by proof that any law-en-
35 forcement officers has, prior to the commission of the offense with
36 which the defendant is charged, informed the defendant that tokens,
37 slugs, disks, or other devices of the kind manufactured, sold, offered,
38 or advertised for sale by him or exposed or kept with intent to fur-
39 nish or sell, are being used unlawfully or fraudulently to operate
40 certain specified automatic merchandise vending machines, postage-

1 stamp machines, turnstiles, fare boxes, coin-box telephones, parking
 2 meters, or other receptacles, depositories, or contrivances, designed
 3 to receive or to be operated by lawful coins of the United States.

4 SURRENDER OF COUNTERFEIT PARAPHERNALIA

5 SEC. 329. Whoever, having the custody of any counterfeits of any
 6 coins or obligations or other securities of the United States or of any
 7 foreign government, or custody of any articles, devices or other things
 8 made, possessed, or used in violation of section 226 of the Criminal
 9 Code Reform Act of 1973 (12 U.S.C. , or of section 323, 325, 328, or
 10 330 of the Criminal Code Reform Act of 1973 (31 U.S.C. , , , or
 11), or of section 1421, 1731, 1741, or 1742 of title 18, United States
 12 Code, or custody of any material or apparatus used or fitted or intended
 13 to be used, in the making of such counterfeits, articles, devices or things,
 14 fails or refuses to surrender possession thereof upon request by any
 15 authorized agent of the Treasury Department, or other proper officer,
 16 is guilty of a Class A misdemeanor.

17 MAKING OR POSSESSING LIKENESSES OF COINS

18 SEC. 330. Whoever, within the United States, makes or brings there-
 19 in from any foreign country, or possesses with intent to sell, give away,
 20 or in any other manner uses the same, except under authority of the
 21 Secretary of the Treasury or other proper officer of the United States,
 22 any token, disk, or device in the likeness or similitude as to design,
 23 color, or the inscription thereon of any of the coins of the United
 24 States or of any foreign country issued as money, either under the
 25 authority of the United States or under the authority of any foreign
 26 government shall be fined not more than \$100.

27 SEC. 331. Section 203 of the Act of October 26, 1970 (84 Stat. 1118,
 28 31 U.S.C. 1052), is amended by amending subsection (k) to read as
 29 follows:

30 “(k) For the purposes of section 1343 of title 18, United States Code,
 31 the contents of reports required under any provision of this title are
 32 material statements in government matters or government records.”

33 AMENDMENT RELATING TO NAVIGATION AND NAVIGABLE WATERS—TITLE
 34 33, UNITED STATES CODE

35 SEC. 332. Section 10 of the Act of June 30, 1948, as amended (62 Stat.
 36 1159, 33 U.S.C. 1160), is amended by deleting the words “section 1905
 37 of title 18” in subsection (k) (1) and inserting in lieu thereof the words
 38 “section 9301 of title 5”.

1 AMENDMENTS RELATING TO PATRIOTIC SOCIETIES AND OBSERVANCES—

2 TITLE 36, UNITED STATES CODE

3 RED CROSS

4 SEC. 333. Whoever wears or displays the sign of the Red Cross or any
5 insignia colored in imitation thereof for the fraudulent purpose of in-
6 ducing the belief that he is a member of or an agent for the American
7 National Red Cross; or

8 Whoever, whether a corporation, association or person, other than
9 the American National Red Cross and its duly authorized employees
10 and agents and the sanitary and hospital authorities of the armed
11 forces of the United States, uses the emblem of the Greek red cross on
12 a white ground, or any sign or insignia made or colored in imitation
13 thereof or the words "Red Cross" or "Geneva Cross" or any combina-
14 tion of these words—

15 Is guilty of a Class B misdemeanor.

16 This section shall not make unlawful the use of any such emblem,
17 sign, insignia or words which was lawful on June 25, 1948.

18 RED CROSS MEMBERS OR AGENTS

19 SEC. 334. Whoever, within the United States, falsely or fraudulently
20 holds himself out as or represents or pretends himself to be a member
21 of or an agent for the American National Red Cross for the purpose
22 of soliciting, collecting, or receiving money or material, is guilty of a
23 Class A misdemeanor.

24 BADGE OR MEDAL OF VETERANS' ORGANIZATIONS

25 SEC. 335. Whoever knowingly manufactures, reproduces, sells or
26 purchases for resale, either separately or on or appended to, any
27 article of merchandise manufactured or sold, any badge, medal,
28 emblem, or other insignia or any colorable imitation thereof, of any
29 veterans' organization incorporated by enactment of Congress, or of
30 any organization formally recognized by any such veterans' organiza-
31 tion as an auxiliary of such veterans' organization, or knowingly
32 prints, lithographs, engraves or otherwise reproduces on any poster,
33 circular, periodical, magazine, newspaper, or other publication, or
34 circulates or distributes any such printed matter bearing a reproduc-
35 tion of such badge, medal, emblem, or other insignia or any colorable
36 imitation thereof, except when authorized under rules and regulations
37 prescribed by any such organization, is guilty of a Class B mis-
38 demeanor.

AMENDMENTS RELATING TO VETERANS' BENEFITS—TITLE 38,
UNITED STATES CODE

SEC. 336. (a) Section 3402 of chapter 59 of title 38, United States Code, is amended by deleting the words "sections 203, 205, 206, or 207 of title 18" in subsection (c) and inserting in lieu thereof the words "section 9102, 9104, 9105, or 9106 of title 5 or section 1352, 1353, or 1354 of title 18".

(b) Chapter 61 of title 38 is amended as follows:

(1) Section 3505 is amended by deleting the words "for which punishment is prescribed (1) in the following provisions of title 18, United States Code: sections 792, 793, 794, 798, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105" and inserting in lieu thereof the words "described (1) in the following provisions of title 18, United States Code: sections 1101, 1102, 1103, 1111, 1112, 1114, 1117, 1121, 1122, 1123, 1124, 1125, 1127, 1203, and 1302, or a conspiracy to commit one of those offenses";

(2) The following new section is added at the end thereof:

§ 3506. Discharge papers withheld by claim agent

"Whoever, being a claim agent, attorney, or other person engaged in the collection of claims for pay, pension, or other allowances for any soldier, sailor, or marine, or for any commissioned officer of the military or naval forces, or for any person who may have been a soldier, sailor, marine, or officer of the regular or volunteer forces of the United States, or for his dependents or beneficiaries, retains, without the consent of the owner or owners thereof, or refuses to deliver or account for the same upon demand duly made by the owner or owners thereof, or by their agent or attorney, the discharge papers of any such soldier, sailor, or marine, or commissioned officer, which may have been placed in his hands for the purpose of collecting said claims, is guilty of a Class B misdemeanor; and shall be debarred from prosecuting any such claim in any department or agency of the United States."; and

(3) The analysis at the beginning of the chapter is amended by adding at the end thereof the following new item:

"3506. Discharge papers withheld by claim agent."

AMENDMENTS RELATING TO POSTAL SERVICE—TITLE 39, UNITED STATES
CODE

SEC. 337. (a) Chapter 6 of title 39, United States Code, is amended by deleting the words "section 1699 of title 18" in section 602(c) and inserting in lieu thereof the words "section 6011 of this title".

(b) Chapter 30 of title 39, United States Code, is amended as follows:

(1) Section 3001 is amended—

(A) by amending subsection (a) to read as follows: “(a) Matter the deposit or transmittal of which in the mails is punishable under section 1601, 1602, 1603, 1611, 1612, 1613, 1614, 1734, 1832, or 1851 of title 18 or section 6016, 6017, 6018, 6020, or 6021 of this title is nonmailable.”; and

(B) by deleting the words “chapters 71 and 83 of title 18” in subsection (f) and inserting in lieu thereof the words “section 1851 of title 18 and Part VI of this title”;

(2) Section 3003 is amended by deleting the words “sections 1302, 1341, and 1342” in subsection (a) and inserting in lieu thereof the words “section 1734 or 1832”; and

(3) Section 3011 is amended by deleting the words “section 1461 or 1463” in subsection (e) and inserting in lieu thereof the words “section 1851”.

(c) (1) Title 39 of the United States Code is amended by adding at the end thereof the following new part:

“PART VI.—POSTAL OFFENSES

“Sec.

“6001. Mail contracts.

“6002. Postal supply contracts.

“6003. Postmaster or employee as lottery agent.

“6004. Foreign mail as United States mail.

“6005. Carriage of mail generally.

“6006. Carriage of matter out of mail over post routes.

“6007. Carriage of matter out of mail on vessels.

“6008. Private express for letters and packets.

“6009. Transportation of persons acting as private express.

“6010. Prompt delivery of mail from vessel.

“6011. Certification of delivery from vessel.

“6012. Desertion of mails.

“6013. Delay or destruction of newspapers.

“6014. Misappropriation of postal funds.

“6015. Falsification of postal returns to increase compensation.

“6016. Foreign divorce information as nonmailable.

“6017. Firearms as nonmailable; regulations.

“6018. Injurious articles as nonmailable.

“6019. Nonmailable motor vehicle master keys.

“6020. Letters and writings as nonmailable.

“6021. Libelous matter on wrappers or envelopes.

“6022. Avoidance of postage by using lower class matter.

“6023. Postage on mail delivered by foreign vessels.

“6024. Postage unpaid on deposited mail matter.

“6025. Post office conducted without authority.

“6026. Uniforms of carriers.

“6027. Vehicles falsely labeled as carriers.

“6028. Editorials and other matter as ‘advertisements.’

“6029. Sexually oriented advertisements.

“6030. Restrictive use of information.

“6031. Manufacturer of sexually related mail matter.

1 **“§ 6001. Mail contracts**

2 “Whoever, being a person employed in the Postal Service, becomes
3 interested in any contract for carrying the mail, or acts as agent, with
4 or without compensation, for any contractor or person offering to be-
5 come a contractor in any business before the Postal Service, is guilty
6 of a Class A misdemeanor.

7 **“§ 6002. Postal supply contracts**

8 “No contract for furnishing supplies to the Postal Service shall be
9 made with any person who has entered, or proposed to enter, into any
10 combination to prevent the making of any bid for furnishing such
11 supplies, or to fix a price or prices therefore, or who has made any
12 agreement, or given or performed, or promised to give or perform,
13 any consideration whatever to induce any other person not to bid for
14 any such contract, or to bid at a specified price or prices thereon.

15 “Whoever violates this section is guilty of a Class A misdemeanor;
16 and if the offender is a contractor for furnishing such supplies his con-
17 tract may be annulled.

18 **“§ 6003. Postmaster or employee as lottery agent**

19 “Whoever, being an officer or employee of the Postal Service, acts
20 as agent for any lottery office, or under color of purchase or otherwise,
21 vends lottery tickets, or knowingly sends by mail or delivers any letter,
22 package, postal card, circular, or pamphlet advertising any lottery,
23 gift enterprise, or similar scheme, offering prizes dependent in whole
24 or in part upon lot or chance, or any ticket, certificate, or instrument
25 representing any chance, share, or interest in or dependent upon the
26 event of any lottery, gift enterprise, or similar scheme offering prizes
27 dependent in whole or in part upon lot or chance, or any list of the
28 prizes awarded by means of any such scheme, is guilty of a Class A
29 misdemeanor.

30 **“§ 6004. Foreign mail as United States mail**

31 “Every foreign mail, while being transported across the territory of
32 the United States under authority of law, is mail of the United States,
33 and any depredation thereon, or offense in respect thereto, shall be
34 punishable as though it were United States mail.

35 **“§ 6005. Carriage of mail generally**

36 “Whoever, being concerned in carrying the mail, collects, receives,
37 or carries any letter or packet, contrary to law, is guilty of a Class C
38 misdemeanor.

1 **“§ 6006. Carriage of matter out of mail over post routes**

2 “Whoever, having charge or control of any conveyance operating by
3 land, air, or water, which regularly performs trips at stated periods
4 on any post route, or from one place to another between which the
5 mail is regularly carried, carries, otherwise than in the mail, any let-
6 ters or packets, except such as relate to some part of the cargo of such
7 conveyance, or to the current business of the carrier, or to some article
8 carried at the same time by the same conveyance, shall, except as
9 otherwise provided by law, be fined not more than \$50.

10 **“§ 6007. Carriage of matter out of mail on vessels**

11 “Whoever carries any letter or packet on board any vessel which
12 carries the mail, otherwise than in such mail, is, except as otherwise
13 provided by law, guilty of a Class C misdemeanor.

14 **“§ 6008. Private express for letters and packets**

15 “(a) Whoever establishes any private express for the conveyance of
16 letters or packets, or in any manner causes or provides for the con-
17 veyance of the same by regular trips or at stated periods over any post
18 route which is or may be established by law, or from any city, town,
19 or place to any other city, town, or place, between which the mail is
20 regularly carried, is guilty of a Class B misdemeanor.

21 “This section shall not prohibit any person from receiving and
22 delivering to the nearest post office, postal car, or other authorized
23 depository for mail matter any mail matter properly stamped.

24 “(b) Whoever transmits by private express or other unlawful
25 means, or delivers to any agent thereof, or deposits at any appointed
26 place, for the purpose of being so transmitted any letter or packet,
27 shall be fined not more than \$50.

28 “(c) This chapter shall not prohibit the conveyance or transmission
29 of letters or packets by private hands without compensation, or by
30 special messenger employed for the particular occasion only. When-
31 ever more than twenty-five such letters or packets are conveyed or
32 transmitted by such special messenger, the requirements of section 601
33 of title 39, shall be observed as to each piece.

34 **“§ 6009. Transportation of persons acting as private express**

35 “Whoever, having charge or control of any conveyance operating
36 by land, air, or water, knowingly conveys or knowingly permits the
37 conveyance of any person acting or employed as a private express
38 for the conveyance of letters or packets, and actually in possession of
39 the same for the purpose of conveying them contrary to law, shall be
40 fined not more than \$150.

1 **“§ 6010. Prompt delivery of mail from vessel**

2 “Whoever, having charge or control of any vessel passing between
3 ports or places in the United States, and arriving at any such port
4 or place where there is a post office, fails to deliver to the postmaster
5 or at the post office, within three hours after his arrival, if in the day-
6 time, and if at night, within two hours after the next sunrise, all let-
7 ters and packages brought by him or within his power or control and
8 not relating to the cargo, addressed to or destined for such port or
9 place, shall be fined not more than \$150.

10 “For each letter or package so delivered he shall receive two cents
11 unless the same is carried under contract.

12 **“§ 6011. Certification of delivery from vessel**

13 “No vessel arriving within a port or collection district of the United
14 States shall be allowed to make entry or break bulk until all letters
15 on board are delivered to the nearest post office, except where waybilled
16 for discharge at other ports in the United States at which the vessel
17 is scheduled to call and the Postal Service does not determine that un-
18 reasonable delay in the mails will occur, and the master or other person
19 having charge or control thereof has signed and sworn to the following
20 declaration before the collector or other proper customs officer:

21 “‘I, A. B., master —, of the —, arriving from —, and now
22 lying in the port of —, do solemnly swear (or affirm) that I have
23 to the best of my knowledge and belief delivered to the post office
24 at — every letter and every bag, packet, or parcel of letters on
25 board the said vessel during her last voyage, or in my possession or
26 under my power or control, except where waybilled for discharge at
27 other ports in the United States at which the said vessel is scheduled
28 to call and which the Postal Service has not determined will be
29 unreasonably delayed by remaining on board the said vessel for delivery
30 at such ports.’

31 “Whoever, being the master or other person having charge or
32 control of such vessel, breaks bulk before he has arranged for such
33 delivery or onward carriage, shall be fined not more than \$100.

34 **“§ 6012. Desertion of mails**

35 “Whoever, having taken charge of any mail, voluntarily quits or
36 deserts the same before he has delivered it into the post office at the
37 termination of the route, or to some known mail carrier, messenger,
38 agent, or other employee in the Postal Service authorized to receive
39 the same, is guilty of a Class A misdemeanor.

1 **“§ 6013. Delay or destruction of newspapers**

2 “Whoever, being a Postal Service officer or employee, improperly
3 detains, delays, or destroys any newspaper, or permits any other per-
4 son to detain, delay, or destroy the same, or opens, or permits any
5 other person to open, any mail or package of newspapers not directed
6 to the office where he is employed; or

7 “Whoever, without authority, opens, or destroys any mail or pack-
8 age of newspapers not directed to him, is guilty of a Class A
9 misdemeanor.

10 **“§ 6014. Misappropriation of postal funds**

11 “Section 1731 of title 18 shall not prohibit any Postal Service officer
12 or employee from depositing, under the direction of the Postal Serv-
13 ice, in a national bank designated by the Secretary of the Treasury
14 for that purpose, to his own credit as Postal Service officer or employee
15 any funds in his charge, nor prevent his negotiating drafts or other
16 evidences of debt through such bank, or through United States dis-
17 bursing officers, or otherwise, when instructed or required so to do by
18 the Postal Service, for the purpose of remitting surplus funds from
19 one post office to another.

20 **“§ 6015. Falsification of postal returns to increase compensation**

21 “Whoever, being a Postal Service officer or employee in any post
22 office or station thereof, for the purpose of increasing the emoluments
23 or compensation of his office, induces, or attempts to induce, any person
24 to deposit mail matter in, or forward in any manner for mailing at,
25 the office where such officer or employee is employed, knowing such
26 matter to be properly mailable at another post office—

27 “Is guilty of a Class A misdemeanor.

28 **“§ 6016. Foreign divorce information as nonmailable**

29 “Every written or printed card, circular, letter, book, pamphlet,
30 advertisement, or notice of any kind, giving or offering to give in-
31 formation concerning where or how or through whom a divorce may
32 be secured in a foreign country, and designed to solicit business in
33 connection with the procurement thereof, is nonmailable matter and
34 shall not be conveyed in the mails or delivered from any post office or
35 by any letter carrier.

36 “Whoever knowingly deposits, for mailing or delivery, anything de-
37 clared by this section to be nonmailable, or knowingly takes the same
38 from the mails for the purposes of circulating or disposing thereof,
39 is guilty of a Class A misdemeanor.

1 **“§ 6017. Firearms as nonmailable; regulations**

2 “Pistols, revolvers, and other firearms capable of being concealed
3 on the person are nonmailable and shall not be deposited in or carried
4 by the mails or delivered by any officer or employee of the Postal Ser-
5 vice. Such articles may be conveyed in the mails, under such regula-
6 tions as the Postal Service shall prescribe, for use in connection with
7 their official duty, to officers of the Army, Navy, Air Force, Coast
8 Guard, Marine Corps, or Organized Reserve Corps; to officers of the
9 National Guard or Militia of a State, Territory, or District; to offices
10 of the United States or of a State, Territory, or District whose of-
11 ficial duty is to serve warrants of arrest or commitments; to employees
12 of the Postal Service; to officers and employees of enforcement agen-
13 cies of the United States; and to watchmen engaged in guarding the
14 property of the United States, a State, Territory, or District. Such
15 articles also may be conveyed in the mails to manufacturers of firearms
16 or bona fide dealers therein in customary trade shipments, including
17 such articles for repairs or replacement of parts, from one to the other,
18 under such regulations as the Postal Service shall prescribe.

19 “Whoever knowingly deposits for mailing or delivery, or knowingly
20 causes to be delivered by mail according to the direction thereon, or at
21 any place to which it is directed to be delivered by the person to
22 whom it is addressed, any pistol, revolver, or firearm declared non-
23 mailable by this section, is guilty of a Class A misdemeanor.

24 **“§ 6018. Injurious articles as nonmailable**

25 “(a) All kinds of poison, and all articles and compositions contain-
26 ing poison, and all poisonous animals, insects, reptiles, and all explo-
27 sives, inflammable materials, infernal machines, and mechanical,
28 chemical, or other devices or compositions which may ignite or ex-
29 plode, and all disease germs or scabs, and all other natural or artifi-
30 cial articles, compositions, or material which may kill or injure an-
31 other, or injure the mails or other property, whether or not sealed as
32 first-class matter, are nonmailable matter and shall not be conveyed
33 in the mails or delivered from any post office or station thereof, nor
34 by any officer or employee of the Postal Service.

35 “(b) The Postal Service may permit the transmission in the mails,
36 under such rules and regulations as it shall prescribe as to prepara-
37 tion and packing, of any such articles which are not outwardly or of
38 their own force dangerous or injurious to life, health, or property.

39 “(c) The Postal Service is authorized and directed to permit the
40 transmission in the mails, under regulations to be prescribed by it,

1 of live scorpions which are to be used for purposes of medical research
2 or for the manufacture of antivenom. Such regulations shall include
3 such provisions with respect to the packaging of such live scorpions
4 for transimission in the mails as the Postal Service deems necessary
5 or desirable for the protection of Postal Service personnel and of the
6 public generally and for ease of handling by such personnel and by
7 any individual connected with such research or manufacture. Nothing
8 contained in this paragraph shall be construed to authorize the trans-
9 mission in the mails of live scorpions by means of aircraft engaged
10 in the carriage of passengers for compensation or hire.

11 “(d) The transmission in the mails of poisonous drugs and medi-
12 cines may be limited by the Postal Service to shipments of such
13 articles from the manufacturer thereof or dealer therein to licensed
14 physicians, surgeons, dentists, pharmacists, druggists, cosmetologists,
15 barbers, and veterinarians under such rules and regulations as it shall
16 prescribe.

17 “(e) The transmission in the mails of poisons for scientific use, and
18 which are not outwardly dangerous or of their own force dangerous
19 or injurious to life, health, or property, may be limited by the Postal
20 Service to shipments of such articles between the manufacturers there-
21 of, dealers therein, bona fide research or experimental scientific labora-
22 tories, and such other persons who are employees of the Federal, a
23 State, or local government, whose official duties are comprised, in
24 whole or in part, of the use of such poisons, and who are designated
25 by the head of the agency in which they are employed to receive or
26 send such articles, under such rules and regulations as the Postal
27 Service shall prescribe.

28 “(f) All spirituous, vinous, malted, fermented, or other intoxicating
29 liquors of any kind are nonmailable and shall not be deposited in or
30 carried through the mails.

31 “(g) All knives having a blade which opens automatically (1) by
32 hand pressure applied to a button or other device in the handle of the
33 knife, or (2) by operation of inertia, gravity, or both, are nonmail-
34 able and shall not be deposited in or carried by the mails or delivered
35 by any officer or employee of the Postal Service. Such knives may be
36 conveyed in the mails, under such regulations as the Postal Service
37 shall prescribe—

38 “(1) to civilian or Armed Forces supply or procurement officers
39 and employees of the Federal Government ordering, procuring,
40 or purchasing such knives in connection with the activities of the
41 Federal Government;

1 “(2) to supply or procurement officers of the National Guard,
2 the Air National Guard, or militia of a State, Territory, or the
3 District of Columbia ordering, procuring, or purchasing such
4 knives in connection with the activities of such organizations;

5 “(3) to supply or procurement officers or employees of the mu-
6 nicipal government of the District of Columbia or of the govern-
7 ment of any State or Territory, or any county, city, or other po-
8 litical subdivision of a State or Territory, ordering, procuring,
9 or purchasing such knives in connection with the activities of such
10 government; and

11 “(4) to manufacturers of such knives or bona fide dealers therein
12 in connection with any shipment made pursuant to an order from
13 any person designated in paragraphs (1), (2), and (3).

14 The Postal Service may require, as a condition of conveying any such
15 knife in the mails, that any person proposing to mail such knife ex-
16 plain in writing to the satisfaction of the Postal Service that the mail-
17 ing of such knife will not be in violation of this section.

18 “(h) Any advertising, promotional, or sales matter which solicits or
19 induces the mailing of anything declared nonmailable by this sec-
20 tion is likewise nonmailable unless such matter contains wrapping or
21 packaging instructions which are in accord with regulations promul-
22 gated by the Postal Service.

23 “Whoever knowingly deposits for mailing or delivery, or knowingly
24 causes to be delivered by mail, according to the direction thereon, or at
25 at any place at which it is directed to be delivered by the person to
26 whom it is addressed, anything declared nonmailable by this section,
27 unless in accordance with the rules and regulations authorized to be
28 prescribed by the Postal Service, is guilty of a Class A misdemeanor.

29 **“§ 6019. Nonmailable motor vehicle master keys**

30 “Whoever knowingly deposits for mailing or delivery, or knowingly
31 causes to be delivered by mail according to the direction thereon, or at
32 any place to which it is directed to be delivered by the person to whom
33 it is addressed, any matter declared to be nonmailable by section 3002
34 of title 39, is guilty of a Class A misdemeanor.

35 **“§ 6020. Letters and writings as nonmailable**

36 “(a) Every letter, writing, circular, postal card, picture, print, en-
37 graving, photograph, newspaper, pamphlet, book, or other publication,
38 matter or thing, in violation of section 1114, 1116, 1121, 1122, 1123,
39 1124, 1125, 1201, 1202, 1205, 1221, 1225, 1311, 1343, 1741, 1742, or 1744
40 of title 18 or which contains any matter advocating or urging treason,

insurrection, or forcible resistance to any law of the United States is nonmailable and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

“(b) Whoever uses or attempts to use the mails or Postal Service for the transmission of any matter declared by this section to be nonmailable, is guilty of a Class A misdemeanor.

“§ 6021. Libelous matters on wrappers or envelopes

“All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which is written or printed or otherwise impressed or apparent any delineation, epithet, term, or language of libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, is nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

“Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, is guilty of a Class A misdemeanor.

“§ 6022. Avoidance of postage by using lower class matter

“Matter of the second, third, or fourth class containing any writing or printing in addition to the original matter, other than as authorized by law, shall not be admitted to the mails, nor delivered, except upon payment of postage for matter of the first class, deducting therefrom any amount which may have been prepaid by stamps affixed, unless by direction of a duly authorized officer of the Postal Service such postage shall be remitted.

“Whoever knowingly conceals or incloses any matter of a higher class in that of a lower class, and deposits the same for conveyance by mail, at a less rate than would be charged for such higher class matter, shall be fined not more than \$100.

“§ 6023. Postage on mail delivered by foreign vessels

“Except as otherwise provided by treaty or convention the Postal Service may require the transportation by any steamship of mail between the United States and any foreign port at the compensation fixed under authority of law. Upon refusal by the master or the com-

1 mander of such steamship or vessel to accept the mail, when tendered
2 by the Postal Service or its representative, the collector or other officer
3 of the port empowered to grant clearance, on notice of the refusal
4 aforesaid, shall withhold clearance, until the collector or other officer
5 of the port is informed by the Postal Service or its representative
6 that the master or commander of the steamship or vessel has accepted
7 the mail or that conveyance by his steamship or vessel is no longer
8 required by the Postal Service.

9 **“§ 6024. Postage unpaid on deposited mail matter**

10 “Whoever knowingly and willfully deposits any mailable matter
11 such as statements of accounts, circulars, sale bills, or other like matter,
12 on which no postage has been paid, in any letter box established,
13 approved, or accepted by the Postal Service for the receipt or delivery
14 of mail matter on any mail route with intent to avoid payment of
15 lawful postage thereon, shall for each such offense be fined not more
16 than \$300.

17 **“§ 6025. Post office conducted without authority**

18 “Whoever, without authority from the Postal Service, sets up or
19 professes to keep any office or place of business bearing the sign, name,
20 or title of post office, shall be fined not more than \$500.

21 **“§ 6026. Uniforms of carriers**

22 “Whoever, not being connected with the letter-carrier branch of the
23 Postal Service, wears the uniform or badge which may be prescribed
24 by the Postal Service to be worn by letter carriers, is guilty of a Class B
25 misdemeanor.

26 “The provisions of the preceding paragraph shall not apply to an
27 actor or actress in a theatrical, television, or motion-picture production
28 who wears the uniform or badge of the letter-carrier branch of the
29 Postal Service while portraying a member of that service, if the por-
30 trayal does not tend to discredit that service.

31 **“§ 6027. Vehicles falsely labeled as carriers**

32 “It shall be unlawful to paint, print, or in any manner to place upon
33 or attach to any steamboat or other vessel, or any car, stagecoach, ve-
34 hicle, or other conveyance, not actually used in carrying the mail, the
35 words ‘United States Mail’, or any words, letters, or characters of like
36 import; or to give notice, by publishing in any newspaper or other-
37 wise, that any steamboat or other vessel, or any car, stagecoach, vehicle,
38 or other conveyance, is used in carrying the mail, when the same is not
39 actually so used.

1 “Whoever violates, and every owner, receiver, lessee or managing op-
2 erator who suffers or permits the violation of, any provision of this
3 section, is guilty of a Class B misdemeanor.

4 **“§ 6028. Editorials and other matter as ‘advertisements’**

5 “Whoever, being an editor or publisher, prints in a publication en-
6 tered as second class mail, editorial or other reading matter for which
7 he has been paid or promised a valuable consideration, without plain-
8 ly marketing the same ‘advertisement’ shall be fined not more than
9 \$500.

10 **“§ 6029. Sexually oriented advertisements**

11 “(a) Whoever—

12 “(1) willfully uses the mails for the mailing, carriage in the
13 mails, or delivery of any sexually oriented advertisement in viola-
14 tion of section 3010 of title 39, or willfully violates any regulations
15 of the Board of Governors issued under such section ; or

16 “(2) sells, leases, rents, lends, exchanges, or licenses the use of,
17 or, except for the purpose expressly authorized by section 3010 of
18 title 39, uses a mailing list maintained by the Board of Gover-
19 nors under such section ;

20 is guilty of a Class A misdemeanor.

21 “(b) For the purpose of this section, the term ‘sexually oriented
22 advertisement’ shall have the same meaning as given it in section 3010
23 (d) of title 39.

24 **“§ 6030. Restrictive use of information**

25 “(a) No information or evidence obtained by reason of compliance
26 by a natural person with any provision of section 3010 of title 39, or
27 regulations issued thereunder, shall, except as provided in subsection
28 (c) of this section, be used, directly or indirectly, as evidence against
29 that person is a criminal proceeding.

30 “(b) The fact of the performance of any act by an individual in com-
31 pliance with any provision of section 3010 of title 39, or regulations
32 issued thereunder, shall not be deemed the admission of any fact, or
33 otherwise be used, directly or indirectly, as evidence against that per-
34 son in a criminal proceeding, except as provided in subsection (c) of
35 this section.

36 “(c) Subsections (a) and (b) of this section shall not preclude the
37 use of any such information or evidence in a prosecution or other action
38 under any applicable provision of law with respect to the furnishing
39 of false information.

40 **“§ 6031. Manufacturer of sexually related mail matter**

41 “(a) Whoever shall print, reproduce, or manufacture any sexually
42 related mail matter, intending or knowing that such matter will be

1 deposited for mailing or delivery by mail in violation of section 3008
2 or 3010 of title 39, or in violation of any regulation of the Postal Serv-
3 ice issued under such section, is guilty of a Class A misdemeanor.

4 “(b) As used in this section, the term ‘sexually related mail matter’
5 means any matter which is within the scope of section 3008(a) or
6 3010(d) of title 39.”; and

7 (2) The analysis at the beginning of title 39 is amended by adding
8 at the end thereof the following new item :

9 “VI. POSTAL OFFENSES----- 6001”

10 AMENDMENT RELATING TO PUBLIC BUILDINGS, PROPERTY, AND WORKS—

11 TITLE 40, UNITED STATES CODE

12 SEC. 338. Section 108 of the Appalachian Regional Development
13 Act of 1965, as amended (79 Stat. 9, 40 U.S.C. App. 108), is amended—

14 (a) by deleting the words “sections 202 through 209 of title 18”
15 in subsection (d) and inserting in lieu thereof the words “sections
16 9101 through 9108 of title 5, United States Code, and sections
17 1352, 1353, and 1354 of title 18”; and

18 (b) by deleting the words “sections 202 through 209, title 18”
19 in subsection (e) and inserting in lieu thereof the words “sections
20 9101 through 9108 of title 5, United States Code, and sections
21 1352, 1353, and 1354 of title 18”.

22 AMENDMENTS RELATING TO PUBLIC CONTRACTS—TITLE 41,

23 UNITED STATES CODE

24 CONTRACTS IN EXCESS OF SPECIFIC APPROPRIATION

25 SEC. 339. Whoever, being an officer or employee of the United States,
26 knowingly contracts for the erection, repair, or furnishing of any
27 public building, or for any public improvement, to pay a larger
28 amount than the specific sum appropriated for such purpose, is guilty
29 of a Class A misdemeanor.

30 WAR CONTRACTS

31 SEC. 340. Whoever willfully secretes, mutilates, obliterates, or
32 destroys—

33 (a) any records of a war contractor relating to the negotiation,
34 award, performance, payment, interim financing, cancellation
35 or other termination, or settlement of a war contract of \$25,000
36 or more; or

37 (b) any records of a war contractor or purchaser relating to
38 any disposition of termination inventory in which the considera-
39 tion received by any war contractor or any government agency
40 is \$5,000 or more, before the lapse of (1) five years after such
41 disposition of termination inventory by such war contractor or

government agency, or (2) five years after the final settlement of such war contract, or (3) five years after 12 o'clock noon of December 31, 1946, whichever applicable period is longer, shall, if a corporation, be fined not more than \$50,000, and, if a natural person, shall be guilty of a Class A misdemeanor.

The Administrator of General Services, by regulation, may authorize the destruction of such records upon such terms and conditions as he deems appropriate, including the requirement for the making and retaining of photographs or microphotographs, which shall have the same force and effect as the originals thereof.

The definitions of terms in section 103 of Title 41 shall apply to similar terms used in this section.

AMENDMENTS RELATING TO THE PUBLIC HEALTH AND WELFARE—

TITLE 42, UNITED STATES CODE

UNIFORM OF PUBLIC HEALTH SERVICE

SEC. 341. Whoever, in any place within the jurisdiction of the United States or in the Canal Zone, without authority, wears the uniform or a distinctive part thereof or anything similar to a distinctive part of the uniform of the Public Health Service, is guilty of a Class B misdemeanor.

VIOLATION OF REGULATIONS OF NATIONAL AERONAUTICS AND SPACE

ADMINISTRATION

SEC. 342. Whoever willfully violates, attempts to violate, or conspires to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, is guilty of a Class A misdemeanor.

SEC. 343. Section 314 of the Act of July 1, 1944, as amended (58 Stat. 693, 42 U.S.C. 246), is amended by deleting the words "sections 203, 205, 207, 208, and 209 of title 18" in subsection (f) (7) (A) and inserting in lieu thereof the words "sections 9102, 9104, 9106, 9107, and 9108 of title 5 of the United States Code and sections 1352, 1353, and 1354 of title 18".

SEC. 344. Section 359 of the Act of July 1, 1944, as added by section 2(3) of the Act of October 18, 1968 (82 Stat. 1180, 42 U.S.C. 263g),

1 is amended by deleting the words "section 1905 of title 18" in sub-
2 section (d) and inserting in lieu thereof the words "section 9301 of
3 title 5".

4 SEC. 345. Section 360A of the Act of July 1, 1944, as added by sec-
5 tion 2(3) of the Act of October 18, 1968 (82 Stat. 1182, 42 U.S.C.
6 263i), is amended by deleting the words "section 1905 of title 18" in
7 subsection (e) and inserting in lieu thereof the words "section 9301 of
8 title 5".

9 SEC. 346. Section 202 of the Act of August 14, 1935, as amended (49
10 Stat. 623, 42 U.S.C. 402), is amended by amending subsection (u) (1)
11 (A) to read as follows:

12 "(A) section 1101 (treason), 1102 (armed rebellion or insur-
13 rection), 1103 (inciting overthrow or destruction of the govern-
14 ment), 1111 (sabotage), 1112 (impairing military effectiveness),
15 1114 (impairing military effectiveness by false statement), 1117
16 (inciting or aiding mutiny, insubordination, or desertion), 1121
17 (espionage), 1122 (disclosing national defense information), 1123
18 (mishandling national defense information), 1124 (disclosing
19 classified information), 1125 (unlawfully obtaining classified in-
20 formation), 1127 (failing to register as a person trained in a for-
21 eign espionage system), or 1203 (entering or recruiting for a
22 foreign armed force) of title 18 of the United States Code, or
23 conspiracy to commit any of these offenses, or".

24 SEC. 347. Section 109 of the Act of July 15, 1949, as amended (63
25 Stat. 419, 42 U.S.C. 1459), is amended by deleting the words "title 18
26 U.S.C., section 874" in subsection (b) and inserting in lieu thereof the
27 words "section 1722 or 1723 of title 18, United States Code, where
28 there is jurisdiction under section 1721 (c) (2)".

29 SEC. 348. Section 310 of the Act of September 1, 1951 (65 Stat.
30 307, 42 U.S.C. 1592i), is amended by deleting the words "section 874"
31 in subsection (b) and inserting in lieu thereof the words "sections
32 1722 and 1723".

33 SEC. 349. Section 114 of the Act of July 14, 1955, as added by sec-
34 tion 4(a) of the Act of December 31, 1970 (84 Stat. 1687, 42 U.S.C.
35 1857c-9), is amended by deleting the words "section 1905 of title 18"
36 in subsection (c) and inserting in lieu thereof the words "section 9301
37 of title 5".

38 SEC. 350. Section 115 of the Act of July 14, 1955, as added by section
39 1 of the Act of December 17, 1963, and amended (77 Stat. 396, 42
40 U.S.C. 1857d), is amended by deleting the words "section 1905 of title

1 18” in subsection (j) (1) and inserting in lieu thereof the words “sec-
2 tion 9301 of title 5”.

3 SEC. 351. Section 208 of the Act of July 14, 1955, as added by section
4 101(8) of the Act of October 20, 1965, and amended (79 Stat. 994, 42
5 U.S.C. 1857f-6), is amended by deleting the words “section 1905 of
6 title 18” in subsection (b) and inserting in lieu thereof the words
7 “section 9301 of title 5”.

8 SEC. 352. Section 15 of the Act of May 10, 1950, as amended (64 Stat.
9 156, 42 U.S.C. 1874), is amended by deleting the words “section 1001”
10 in subsection (d) and inserting in lieu thereof the words “section
11 1343”.

12 SEC. 353. Section 304 of the Act of July 2, 1964 (78 Stat. 246, 42
13 U.S.C. 2000b-3), is amended by deleting the words “writing or docu-
14 ment within the meaning of section 1001” and inserting in lieu thereof
15 the words “material writing or statement within the meaning of sec-
16 tion 1343”.

17 SEC. 354. Section 407 of the Act of July 2, 1964 (78 Stat. 248, 42
18 U.S.C. 2000c-6), is amended by deleting the words “writing or docu-
19 ment within the meaning of section 1001” in subsection (c) and insert-
20 ing in lieu thereof the words “material writing or statement within the
21 meaning of section 1343”.

22 SEC. 355. Section 811 of the Act of August 20, 1964, as added by
23 section 110 of the Act of December 23, 1967 (81 Stat. 723, 42 U.S.C.
24 2992a), is amended by deleting the words “section 1001” in subsection
25 (c) and inserting in lieu thereof the words “section 1343”.

26 SEC. 356. Section 508 of the Act of August 26, 1965 (79 Stat. 568, 42
27 U.S.C. 3188), is amended—

28 (1) by deleting the words “sections 202 through 209 of title
29 18” in subsection (d) and inserting in lieu thereof the words
30 “sections 9101 through 9108 of title 5 and sections 1352, 1353, and
31 1354 of title 18”; and

32 (2) by deleting the words “sections 202 through 209, title 18”
33 in subsection (e) and inserting in lieu thereof the words “section
34 9101 through 9108 of title 5 or sections 1352, 1353, and 1354 of
35 title 18”.

36 SEC. 357. Section 315 of the Act of November 8, 1966 (80 Stat. 1448,
37 42 U.S.C. 3425), is amended by deleting the words “sections 751 and
38 752” and inserting in lieu thereof the words “sections 1314 and 1001”.

39 SEC. 358. Section 316 of the Act of November 8, 1966 (80 Stat. 1448,
40 42 U.S.C. 3426), is amended by deleting the words “section 1001” and
41 inserting in lieu thereof the words “section 1343”.

AMENDMENTS RELATING TO PUBLIC LANDS—TITLE 43, UNITED
STATES CODE

“JOHNNY HORIZON” CHARACTER OR NAME

SEC. 359. As used in this section, the name or character “Johnny Horizon”, means the representation of a tall, lean man, with strong facial features, who wears slacks and sport shirt buttoned to the collar (both green, when colored), no tie, a field jacket (red, when colored), boot-type shoes (brown, when colored) and who carries a backpack, which was originated by the Bureau of Land Management, United States Department of the Interior, as the official symbol for a public service anti-litter program to maintain the beauty and utility of the Nation’s public lands. Whoever, except as authorized under rules and regulations issued by the Secretary of the Interior, knowingly manufactures, reproduces, or uses the character “Johnny Horizon”, or any facsimile thereof, or the name “Johnny Horizon” as a trade name or mark, or in such a manner as suggests the character “Johnny Horizon”, so that such use is likely to cause confusion, or to cause mistake, or to deceive, is guilty of a Class B misdemeanor.

This section shall not make unlawful the use of any such emblem, sign, insignia, or words which was lawful on September 25, 1970.

A violation of this section may be enjoined at the suit of the Attorney General, upon complaint by the Secretary of the Interior.

FIRES LEFT UNATTENDED AND UNEXTINGUISHED

SEC. 360. Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States, including lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, and including any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under the authority of the United States, or any Indian allotment while the title to the same shall remain inalienable by the allottee without the consent of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, is guilty of a Class B misdemeanor.

BIDS AT LAND SALES

SEC. 361. Whoever bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale; or

Whoever, by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale—

Is guilty of a Class A misdemeanor.

DECEPTION OF PROSPECTIVE PURCHASERS

SEC. 362. Whoever, for a reward paid or promised to him in that behalf, undertakes to locate for an intending purchaser, settler, or entryman any public lands of the United States subject to disposition under the public-land laws, and who willfully and falsely represents to such intending purchaser, settler, or entryman that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who, in reckless disregard of the truth, falsely represents to any such person that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, is guilty of a Class A misdemeanor.

AMENDMENT RELATING TO PUBLIC PRINTING AND DOCUMENTS—TITLE 44, UNITED STATES CODE

SEC. 363. Chapter 3 of title 44, United States Code, is amended as follows:

(a) A new section is added at the end thereof as follows:

“§ 318. Printing contracts

“Neither the Public Printer, superintendent of printing, superintendent of binding, nor any of their assistants shall, during their continuance in office, have any interest, direct or indirect, in the publication of any newspaper or periodical, or in any printing, binding, engraving, or lithographing of any kind, or in any contract for furnishing paper or other material connected with the public printing, binding, lithographing, or engraving.

“Whoever violates this section is guilty of a Class A misdemeanor.”

(b) The analysis at the beginning of the chapter is amended by adding at the end thereof the following new item:

“318. Printing contracts.”

AMENDMENTS RELATING TO SHIPPING—TITLE 46, UNITED STATES CODE

DEFINITIONS

SEC. 364. As used in sections 364 to 366 of this Act (46 U.S.C. to):

1 The term "gambling ship" means a vessel used principally for the
2 operation of one or more gambling establishments.

3 The term “gambling establishment” means any common gaming or
4 gambling establishment operated for the purpose of gaming or gam-
5 bling, including accepting, recording, or registering bets, or carrying
6 on a policy game or any other lottery, or playing any game of chance,
7 for money or other thing of value.

8 The term "vessel" includes every kind of water and air craft or other
9 contrivance used or capable of being used as a means of transportation
10 on water, or on water and in the air, as well as any ship, boat, barge,
11 or other water craft or any structure capable of floating on the water.

The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

19 The term “wire communication facility” means any and all instru-
20 mentalties, personnel, and services (among other things, the receipt,
21 forwarding, or delivery of communications) used or useful in the
22 transmission of writings, signs, pictures, and sounds of all kinds by aid
23 of wire, cable, or other like connection between the points of origin and
24 reception of such transmission.

GAMBLING SHIPS

26 SEC. 365. (a) It is unlawful for any citizen or resident of the United
27 States, or any other person who is on an American vessel or is other-
28 wise under or within the jurisdiction of the United States, directly
29 or indirectly—

(1) to set up, operate, or own or hold any interest in any gambling ship or any gambling establishment on any gambling ship, or

(2) in pursuance of the operation of any gambling establishment on any gambling ship, to conduct or deal any gambling game, or to conduct or operate any gambling device, or to induce, entice, solicit, or permit any person to bet or play at any such establishment.

37 if such gambling ship is on the high seas, or is an American vessel or
38 otherwise under or within the jurisdiction of the United States, and is
39 not within the jurisdiction of any State.

(b) Whoever violates the provisions of subsection (a) is guilty of an offense under section 1831 of title 18, United States Code.

(c) Whoever, being (1) the owner of an American vessel, or (2) the owner of any vessel under or within the jurisdiction of the United States, or (3) the owner of any vessel and being an American citizen, uses, or knowingly permits the use of, such vessel in violation of any provision of this section shall, in addition to any other penalties provided by this chapter, forfeit such vessel, together with her tackle, apparel, and furniture, to the United States.

TRANSPORTATION BETWEEN SHORE AND SHIP; PENALTIES

SEC. 366. (a) It is unlawful to operate or use, or to permit the operation or use of, a vessel for the carriage or transportation or for any part of the carriage or transportation, either directly or indirectly, of any passengers, for hire or otherwise, between a point or place within the United States and a gambling ship which is not within the jurisdiction of any State. This section does not apply to any carriage or transportation to or from a vessel in case of emergency involving the safety or protection of life or property.

(b) The Secretary of the Treasury shall prescribe necessary and reasonable rules and regulations to enforce this section and to prevent violations of its provisions.

For the operation or use of any vessel in violation of this section or of any rule or regulation issued hereunder, the owner or charterer of such vessel shall be subject to a civil penalty of \$200 for each passenger carried or transported in violation of such provisions, and the master or other person in charge of such vessel shall be subject to a civil penalty of \$300. Such penalty shall constitute a lien on such vessel, and proceedings to enforce such lien may be brought summarily by way of libel in any court of the United States having jurisdiction thereof. The Secretary of the Treasury may mitigate or remit any of the penalties provided by this section on such terms as he deems proper.

ABANDONMENT OF SAILORS

SEC. 367. Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, is guilty of a Class B misdemeanor.

EXPLOSIVES OR DANGEROUS WEAPONS ABOARD VESSELS

SEC. 368. (a) Whoever brings, carries, or possesses any dangerous weapon, instrument, or device, or any dynamite, nitroglycerin, or other explosive article or compound on board of any vessel registered, enrolled, or licensed under the laws of the United States, or any vessel purchased, requisitioned, chartered, or taken over by the United States pursuant to the provisions of the Act of June 6, 1941, ch. 174, 55 Stat. 242, as amended, without previously obtaining the permission of the owner or the master of such vessel; or

Whoever brings, carries, or possesses any such weapon or explosive on board of any vessel in the possession and under the control of the United States or which has been seized and forfeited by the United States or upon which a guard has been placed by the United States pursuant to the provisions of section 191 of Title 50, without previously obtaining the permission of the captain of the port in which such vessel is located, is guilty of a Class A misdemeanor.

(b) This section shall not apply to the personnel of the Armed Forces of the United States or to officers or employees of the United States or of a State or of a political subdivision thereof, while acting in the performance of their duties, who are authorized by law or by rules or regulations to own or possess any such weapon or explosive.

EXPLOSIVES ON VESSELS CARRYING STEERAGE PASSENGERS

SEC. 369. Whoever, being the master of a steamship or other vessel referred to in section 151 of Title 46, except as otherwise expressly provided by law, takes, carries, or has on board of any such vessel any nitroglycerin, dynamite, or any other explosive article or compound, or any vitriol or like acids, or gunpowder, except for the ship's use, or any article or number of articles, whether as a cargo or ballast, which, by reason of the nature or quantity or mode of storage thereof, shall, either singly or collectively, be likely to endanger the health or lives of the passengers or the safety of the vessel, is guilty of a Class A misdemeanor.

BOARDING VESSELS BEFORE ARRIVAL

SEC. 370. Whoever, not being in the United States service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, is guilty of a Class B misdemeanor.

The master of such vessel may take any such person into custody, and deliver him up forthwith to any law enforcement officer, to be by him

1 taken before any committing magistrate, to be dealt with according to
2 law.

3 SEC. 371. Section 4611 of the Revised Statutes, as amended (46
4 U.S.C. 712), is amended by deleting the words "section 2191 of Title
5 18" and inserting in lieu thereof the words "section 1611, 1612, 1613,
6 or 1623 of title 18, United States Code, with respect to a member of
7 the crew of the vessel".

8 SEC. 372. Section 14 of the Act of August 10, 1971 (85 Stat. 218, 46
9 U.S.C. 1463), is amended—

10 (1) by deleting the words "section 1905 of title 18" in subsec-
11 tion (b) and inserting in lieu thereof the words "section 9301
12 of title 5"; and

13 (2) by deleting the words "that section of title 18" in subsec-
14 tion (b) and inserting in lieu thereof the words "that section of
15 title 5".

16 AMENDMENTS RELATING TO TELEGRAPHS, TELEPHONES, AND RADIO-
17 TELEGRAPHS—TITLE 47, UNITED STATES CODE

18 SEC. 373. When any common carrier, subject to the jurisdiction of
19 the Federal Communications Commission, is notified in writing by a
20 Federal, State, or local law enforcement agency, acting within its
21 jurisdiction, that any facility furnished by it is being used or will be
22 used for the purpose of transmitting or receiving gambling informa-
23 tion in interstate or foreign commerce in violation of Federal, State
24 or local law, it shall discontinue or refuse the leasing, furnishing, or
25 maintaining of such facility, after reasonable notice to the subscriber,
26 but no damages, penalty or forfeiture, civil or criminal, shall be
27 found against any common carrier for any act done in compliance
28 with any notice received from a law enforcement agency. Nothing in
29 this section shall be deemed to prejudice the right of any person af-
30 fected thereby to secure an appropriate determination, as otherwise
31 provided by law, in a Federal court or in a State or local tribunal or
32 agency, that such facility should not be discontinued or removed, or
33 should be restored.

34 BROADCASTING LOTTERY INFORMATION

35 SEC. 374. Whoever broadcasts by means of any radio station for
36 which a license is required by any law of the United States, or whoever,
37 operating any such station, knowingly permits the broadcasting of,
38 any advertisement of or information concerning any lottery, gift enter-
39 prise, or similar scheme, offering prizes dependent in whole or in part
40 upon lot or chance, or any list of the prizes drawn or awarded by means

1 of any such lottery, gift enterprise, or scheme, whether said list con-
 2 tains any part or all of such prizes, is guilty of a Class A misdemeanor.

3 Each day's broadcasting shall constitute a separate offense.

4 FISHING CONTESTS

5 SEC. 375. The provisions of section 229 of the Criminal Code Re-
 6 form Act of 1973 (12 U.S.C.), section 374 of the Criminal Code
 7 Reform Act of 1973 (47 U.S.C.), section 1832 of title 18, United
 8 States Code, and section 6003 of title 39, United States Code, shall not
 9 apply with respect to any fishing contest not conducted for profit
 10 wherein prizes are awarded for the specie, size, weight, or quality of
 11 fish caught by contestants in any bona fide fishing or recreational event.

12 SEC. 376. Section 312 of the Communications Act of 1934, as amended
 13 (48 Stat. 1086, 47 U.S.C. 312), is amended by deleting the words "sec-
 14 tion 1304, 1343, or 1464 of title 18 of the United States Code" in sub-
 15 section (a) (6) and inserting in lieu thereof the words "section 1734
 16 or 1851 of title 18, United States Code, where the offense involved the
 17 use of a facility of wire, radio, or television communication, or section
 18 374 of the Criminal Code Reform Act of 1973 (47 U.S.C.)".

19 SEC. 377. Section 503 of the Communications Act of 1934, as amended
 20 (48 Stat. 1101, 47 U.S.C. 503), is amended by deleting the words "sec-
 21 tion 1304, 1343, or 1464 of title 18 of the United States Code" in sub-
 22 section (b) (1) (E) and inserting in lieu thereof the words "section
 23 1734 or 1851 of title 18, United States Code, where the offense involved
 24 the use of a facility of wire, radio, or television communication, or
 25 section 374 of the Criminal Code Reform Act of 1973 (47 U.S.C.)".

26 AMENDMENTS RELATING TO TRANSPORTATION—TITLE 49,
 27 UNITED STATES CODE

28 DEFINITIONS

29 SEC. 378. As used in sections 378 to 383 of the Criminal Code Reform
 30 Act of 1973 (49 U.S.C. to), unless otherwise indicated—

31 "carrier" means any person engaged in the transportation of
 32 passengers or property by land, as a common, contract, or private
 33 carrier, or freight forwarder as those terms are used in the Inter-
 34 state Commerce Act, as amended, and officers, agents, and em-
 35 ployees of such carriers.

36 "person" means any individual, firm, copartnership, corpora-
 37 tion, company, association, or joint-stock association, and in-
 38 cludes any trustee, receiver, assignee, or personal representative
 39 thereof.

40 "for-hire carrier" includes common and contract carriers.

“shipper” shall be construed to include officers, agents, and employees of shippers.

“interstate and foreign commerce” means commerce between a point in one State and a point in another State, between points in the same State through another State or through a foreign country, between points in a foreign country or countries through the United States, and commerce between a point in the United States and a point in a foreign country or in a Territory or possession of the United States, but only insofar as such commerce takes place in the United States. The term “United States” means all the States and the District of Columbia.

“state” includes the District of Columbia.

“detonating fuzes” means fuzes used in military service to detonate the explosive charges of military projectiles, mines, bombs, or torpedoes.

“fuzes” means devices used in igniting the explosive charges of projectiles.

“fuses” means the slow-burning fuses used commercially to convey fire to an explosive combustible mass.

“fusees” means the fusees ordinarily used on steamboats, railroads, and motor carriers as night signals.

“radioactive materials” means any materials or combination of materials that spontaneously emit ionizing radiation.

“etiologic agents” means the causative agent of such diseases as may from time to time be listed in regulations governing etiologic agents prescribed by the Interstate Commerce Commission under section 381 of this Act.

TRANSPORTATION OF EXPLOSIVES, RADIOACTIVE MATERIALS, ETIOLOGIC AGENTS, AND OTHER DANGEROUS ARTICLES

SEC. 379. (a) Any person who knowingly transports, carries, or conveys within the United States, any dangerous explosives, such as and including, dynamite, blasting caps, detonating fuses, black powder, gunpowder, or other like explosive, or any radioactive materials, or etiologic agents, on or in any passenger car or passenger vehicle of any description operated in the transportation of passengers by any for-hire carrier engaged in interstate or foreign commerce, by land, is guilty of a Class A misdemeanor: *Provided, however,* That such explosives, radioactive materials, or etiologic agents may be transported on or in such car or vehicle whenever the Interstate Commerce Commission finds that an emergency requires an expedited movement, in which case

1 such emergency movements shall be made subject to such regulations
2 as the Commission may deem necessary or desirable in the public inter-
3 est in each instance: *Provided further*, That under this section it shall
4 be lawful to transport on or in any such car or vehicle, small quanti-
5 ties of explosives, radioactive materials, etiologic agents, or other
6 dangerous commodities of the kinds, in such amounts, and under such
7 conditions as may be determined by the Interstate Commerce Commis-
8 sion to involve no appreciable danger to persons or property: *And pro-*
9 *vided further*, That it shall be lawful to transport on or in any such
10 car or vehicle such fuses, torpedoes, rockets, or other signal devices
11 as may be essential to promote safety in the operation of any such car
12 or vehicle on or in which transported. This section shall not prevent
13 the transportation of military forces with their accompanying muni-
14 tions of war on passenger-equipment cars or vehicles.

15 (b) No person shall knowingly transport, carry or convey within
16 the United States liquid nitroglycerin, fulminate in bulk in dry condi-
17 tion, or other similarly dangerous explosives, or radioactive materials,
18 or etiologic agents, on or in any car or vehicle of any description
19 operated in the transportation of passengers or property by any car-
20 rier engaged in interstate or foreign commerce, by land, except under
21 such rules and regulations as the Commission shall specifically pre-
22 scribe with respect to the safe transportation of such commodities.
23 The Commission shall from time to time determine and prescribe
24 what explosives are "other similarly dangerous explosives", and may
25 prescribe the route or routes over which such explosives, radioactive
26 materials, or etiologic agents shall be transported. Any person who
27 violates this provision, or any regulation prescribed hereunder by the
28 Interstate Commerce Commission, is guilty of a Class A misdemeanor.

29 (c) Any shipment of radioactive materials made by or under the
30 direction or supervision of the Atomic Energy Commission or the
31 Department of Defense which is escorted by personnel specially desig-
32 nated by or under the authority of the Atomic Energy Commission
33 or the Department of Defense, as the case may be, for the purpose of
34 national security, shall be exempt from the requirements of sections
35 378 to 382 of this Act and the rules and regulations prescribed there-
36 under. In the case of any shipment of radioactive materials made by
37 or under the direction or supervision of the Atomic Energy Commis-
38 sion or the Department of Defense, which is not so escorted by spe-
39 cially designated personnel, certification upon the bill of lading by or
40 under the authority of the Atomic Energy Commission or the Depart-

1 ment of Defense, as the case may be, that the shipment contains radio-
2 active materials shall be conclusive as to content, and no further
3 description shall be necessary or required; but each package, recep-
4 tacle, or other container in such unescorted shipment shall on the out-
5 side thereof be plainly marked "radioactive materials", and shall not
6 be opened for inspection by the carrier.

7 MARKING PACKAGES CONTAINING EXPLOSIVES AND OTHER DANGEROUS
8 ARTICLES

9 SEC. 380. Any person who knowingly delivers to any carrier engaged
10 in interstate or foreign commerce by land or water, and any person
11 who knowingly carries on or in any car or vehicle of any description
12 operated in the transportation of passengers or property by any carrier
13 engaged in interstate or foreign commerce, by land, any explosive,
14 or other dangerous article, specified in or designated by the Inter-
15 state Commerce Commission pursuant to section 381 of this Act (49
16 U.S.C. ----), under any false or deceptive marking, description, in-
17 voice, shipping order, or other declaration, or any person who so de-
18 livers any such article without informing such carrier in writing of
19 the true character thereof, at the time such delivery is made, or without
20 plainly marking on the outside of every package containing explosives
21 or other dangerous articles the contents thereof, if such marking is re-
22 quired by regulations prescribed by the Interstate Commerce Com-
23 mission, is guilty of a Class A misdemeanor.

24 REGULATIONS BY INTERSTATE COMMERCE COMMISSION

25 SEC. 381. (a) The Interstate Commerce Commission shall formulate
26 regulations for the safe transportation within the United States of
27 explosives and other dangerous articles, including radioactive mate-
28 rials, etiologic agents, flammable liquids, flammable solids, oxidizing
29 materials, corrosive liquids, compressed gases, and poisonous sub-
30 stances, which shall be binding upon all carriers engaged in interstate
31 or foreign commerce which transport explosives or other dangerous
32 articles by land, and upon all shippers making shipments of explosives
33 or other dangerous articles via any carrier engaged in interstate or
34 foreign commerce by land or water.

35 (b) The Commission, of its own motion, or upon application made
36 by any interested party, may make changes or modifications in such
37 regulations, made desirable by new information or altered conditions.
38 Before adopting any regulations relating to radio-active materials the
39 Interstate Commerce Commission shall advise and consult with the
40 Atomic Energy Commission.

1 (c) Such regulations shall be in accord with the best-known prac-
2 ticable means for securing safety in transit, covering the packing,
3 marking, loading, handling while in transit, and the precautions
4 necessary to determine whether the material when offered is in proper
5 condition to transport.

6 (d) Such regulations, as well as all changes or modifications there-
7 of, shall, unless a shorter time is specified by the Commission, take
8 effect ninety days after their formulation and publication by the
9 Commission and shall be in effect until reversed, set aside, or modified.

10 (e) In the execution of sections 378 to 382 of this Act, the Com-
11 mission may utilize the services of carrier and shipper associations,
12 including the Bureau for the Safe Transportation of Explosives and
13 other Dangerous Articles, and may avail itself of the advice and as-
14 sistance of any department, commission, or board of the Federal Gov-
15 ernment, and of State and local governments, but no official or em-
16 ployee of the United States shall receive any additional compensation
17 for such service except as now permitted by law.

18 (f) Whoever knowingly violates any such regulation is guilty of a
19 Class A misdemeanor.

20 ADMINISTRATION

21 SEC. 382. (a) The Interstate Commerce Commission is authorized
22 and directed to administer, execute, and enforce all provisions of sec-
23 tions 378 to 382 of this Act, to make all necessary orders in connection
24 therewith, and to prescribe rules, regulations and procedure for such
25 administration, and to employ such officers and employees as may be
26 necessary to carry out these functions.

27 (b) The Commission is authorized to make such studies and con-
28 duct such investigations, obtain such information, and hold such hear-
29 ings as it may deem necessary or proper to assist it in exercising any
30 authority provided in sections 378 to 382 of this Act. For such purposes
31 the Commission is authorized to administer oaths and affirmations,
32 and by subpoena to require any person to appear and testify, or to
33 appear and produce documents, or both, at any designated place.
34 Witnesses subpoenaed under this subsection shall be paid the same fees
35 and mileage as are paid witnesses in the district courts of the United
36 States.

37 (c) In administering and enforcing the provisions of sections 378
38 to 382 of this Act and the regulations prescribed thereunder, the Com-
39 mission shall have and exercise all the powers conferred upon it by
40 the Interstate Commerce Act, including procedural and investigative

1 powers and the power to examine and inspect records and properties
2 of carriers engaged in transporting explosives and other dangerous
3 articles in interstate or foreign commerce and the records and prop-
4 erties of shippers to the extent that such records and properties per-
5 tain to the packing and shipping of explosives and other dangerous
6 articles and the nature of such commodities.

7 TRANSPORTATION OF FIREWORKS INTO STATE PROHIBITING SALE OR USE

8 SEC. 383. Whoever, otherwise than in the course of continuous inter-
9 state transportation through any State, transports fireworks into any
10 State, or delivers them for transportation into any State, or attempts
11 so to do, knowing that such fireworks are to be delivered, possessed,
12 stored, transshipped, distributed, sold, or otherwise dealt with in a
13 manner or for use prohibited by the laws of such State specifically
14 prohibiting or regulating the use of fireworks, is guilty of a Class
15 A misdemeanor.

16 This section shall not apply to a common or contract carrier or to
17 international or domestic water carriers engaged in interstate com-
18 merce or to the transportation of fireworks into a State for the use of
19 Federal agencies in the carrying out or the furtherance of their opera-
20 tions.

21 In the enforcement of this section, the definitions of fireworks con-
22 tained in the laws of the respective States shall be applied.

23 As used in this section, the term "State" includes the several States,
24 Territories, and possessions of the United States, and the District of
25 Columbia.

26 SEC. 384. Section 6 of the Act of October 15, 1966 (80 Stat. 937,
27 49 U.S.C. 1655), is amended by deleting the words "Sections 831-835
28 of title 18, United States Code, as amended" in subsection (e) (4) and
29 inserting in lieu thereof the words "Sections 378 to 382 of the Criminal
30 Code Reform Act of 1973 (49 U.S.C. to)".

31 AMENDMENTS RELATING TO WAR AND NATIONAL DEFENSE—TITLE 50,

32 UNITED STATES CODE

33 PHOTOGRAPHING AND SKETCHING DEFENSE INSTALLATIONS

34 SEC. 385. (a) Whenever, in the interests of national defense, the
35 President defines certain vital military and naval installations or
36 equipment as requiring protection against the general dissemination of
37 information relative thereto, it shall be unlawful to make any photo-
38 graph, sketch, picture, drawing, map, or graphical representation of
39 such vital military and naval installations or equipment without first
40 obtaining permission of the commanding officer of the military or

1 naval post, camp, or station, or naval vessels, military and naval air-
2 craft, and any separate military or naval command concerned, or
3 higher authority, and promptly submitting the product obtained to
4 such commanding officer or higher authority for censorship or such
5 other action as he may deem necessary.

6 (b) Whoever violates this section is guilty of a Class A misde-
7 meanor.

8 USE OF AIRCRAFT FOR PHOTOGRAPHING DEFENSE INSTALLATIONS

9 SEC. 386. Whoever uses or permits the use of an aircraft or any con-
10 trivance used, or designed for navigation or flight in the air, for the
11 purpose of making a photograph, sketch, picture, drawing, map, or
12 graphical representation of vital military or naval installations or
13 equipment, in violation of section 385 of the Criminal Code Reform
14 Act of 1973 (50 U.S.C. ----), is guilty of a Class A misdemeanor.

15 PUBLICATION AND SALE OF PHOTOGRAPHS OF DEFENSE INSTALLATIONS

16 SEC. 387. On and after thirty days from the date upon which the
17 President defines any vital military or naval installation or equip-
18 ment as being within the category contemplated under section 385
19 of the Criminal Code Reform Act of 1973 (50 U.S.C. ———), whoever
20 reproduces, publishes, sells, or gives away any photograph, sketch,
21 picture, drawing, map, or graphical representation of the vital mili-
22 tary or naval installations or equipment so defined, without first ob-
23 taining permission of the commanding officer of the military or naval
24 post, camp, or station concerned, or higher authority, unless such
25 photograph, sketch, picture, drawing, map, or graphical representa-
26 tion has clearly indicated thereon that it has been censored by the
27 proper military or naval authority, is guilty of a Class A misde-
28 meanor.

29 SEC. 388. Section 13A of the Act of September 23, 1950, as added
30 by section 10 of the Act of August 24, 1954, and amended (68 Stat.
31 778, 50 U.S.C. 792a), is amended by deleting the words “chapter 37,
32 105, or 115 of title 18 of the United States Code” in subsection (e) (7)
33 (A) and inserting in lieu thereof the words “section 1101, 1102, 1103,
34 1111, 1112, 1113, 1117, 1121, 1122, 1123, 1124, 1125, 1127, or 1203 of title
35 18, United States Code, or in a conspiracy to violate one of those
36 sections of title 18”.

37 SEC. 389. Section 115 of the Act of September 23, 1950 (64 Stat.
38 1030, 50 U.S.C. 825), is amended—

39 (1) by deleting the words “sections 791 to 797 of title 18 of the
40 United States Code, as amended by this Act”, and inserting in lieu

1 thereof the words “sections 1121, 1122, 1123, and 1124 of title 18
2 and sections 385, 386, and 387 of the Criminal Code Reform Act
3 of 1973 (50 U.S.C. , and)”; and

4 (2) by deleting the words “sections 2151 to 2156 of title 18 of
5 the United States Code, as amended by this Act”, and inserting in
6 lieu thereof the words “sections 1111 and 1112 of title 18”.

7 **TITLE III—GENERAL PROVISIONS**

8 **SEVERABILITY**

9 **SEC. 401.** If the provisions of any part of this Act or the application
10 of any part of this Act to any person or circumstance is held invalid,
11 the provisions of the other parts and their application to other persons
12 or circumstances shall not be affected.

13 **EFFECTIVE DATE**

14 **SEC. 402.** This Act shall take effect on the first day of the first calen-
15 dar month beginning two years after the date of approval of the Act.

[From the Congressional Record, Mar. 27, 1973]

By Mr. HRUSKA (for himself and Mr. McClellan) :

S. 1401. A bill to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes. Referred to the Committee on the Judiciary.

RESTORING THE DEATH PENALTY

Mr. HRUSKA. Mr. President, I introduce for myself and the distinguished senior Senator from Arkansas (Mr. McClellan) S. 1401, a bill to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

Earlier today, I introduced S. 1400, the massive "Criminal Code Reform Act of 1973." Section 2401 of that bill provided in certain instances for the imposition of the death sentence in Federal prosecutions for treason, sabotage, espionage, and murder. Section 2402 of S. 1400 set forth the procedures to be followed in determining the applicability of the sentence of death in these instances.

The bill which I now send to the desk would work the same effect as sections 2401 and 2402 of S. 1400. It is introduced separately in order to allow the Congress to act upon the death penalty as an independent issue of immediate concern, which can be resolved prior to final action on the larger project of rewriting the present Federal Criminal Code.

Present Federal law provides that the death penalty is an authorized sentence upon conviction in at least 10 instances, including murder, treason, rape, air piracy, and delivery of defense information to aid a foreign government. (18 U.S.C. sec. 34 (destruction of motor vehicles or motor vehicle facilities where death results); 18 U.S.C. sec. 351 (assassination or kidnaping of Member of Congress); 18 U.S.C. sec. 794 (gathering or delivering defense information to aid a foreign government); 18 U.S.C. sec. 1111 (murder in the first degree within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. sec. 1114 (murder of certain officers and employees of the United States); sec. 1716 (causing death of another by mailing injurious articles); 18 U.S.C. sec. 1751 (Presidential and Vice Presidential murder and kidnaping); 18 U.S.C. sec. 2031 (rape within the special maritime or territorial jurisdiction of the United States); 18 U.S.C. sec. 2381 (treason); and 49 U.S.C. sec. 1472 (i) (aircraft piracy)).

As drafted, they appear to be unconstitutional under the 1972 decision in *Furman v. Georgia*, 408 U.S. 238 (1972). In addition, there are several other statutes that authorize the death penalty, but each appears to be unconstitutional under *United States v. Jackson*, 390 U.S. 570 (1968), because by permitting the jury and not the court to impose the penalty, they inhibit the exercise of the right to demand a jury trial.

This bill will cure the constitutional defects inherent in present law as revealed in *Furman* and thus restore the death penalty as an available sentence in certain heinous situations.

This "two-track" approach to restoring the death penalty was suggested by the President in his March 14 crime message and is supported fully by the chairman of the Subcommittee on Criminal Laws and Procedures (Mr. McClellan) and myself.

Mr. President, in the unlikely event that any Senator is unaware of it, I would like to call attention to a particularly shocking crime which was committed here in a Washington suburb just a short time ago. According to newspaper accounts, 5 men armed with handguns and a shotgun held about 25 employees of a vending machine company hostage for more than an hour. During that time, they beat, kicked, pistol-whipped and shot their victims in what appears to have been a random exercise of terror. One of the detectives who investigated it described it as the most vicious holdup he had ever seen. At the end of it all, one of the assailants was dead. Two suspects and a dozen of the innocent victims were hospitalized. It appears to have been pure chance that none of the victims was killed. As it is, one woman employee—shot in the throat—may not be able to speak for a year, and others may have been permanently disfigured.

Reports indicate that at least two of the suspects were not new to crimes of violence. In fact, they had pleaded guilty less than a week earlier to charges that they were accessories to a murder the previous September. They were at the time of this most recent incident free on bond awaiting sentencing.

This case is not unique. It does underscore once again the desperate need for tough, realistic new efforts to curb lawlessness and violence. And, particularly, it underscores the need to restore the death penalty to our laws.

But if they run true to form, we will hear social theorists talking about the "inhumanity" of new laws to curtail the criminals, rather than about the rights of peaceful citizens to be free from the threat of imminent violence.

Mr. President, I say to the social theorists: Read the reports of this appalling episode, which took place only last week, and tell the victims if the lenient approach to crime which you advocate should be pursued to the exclusion of all else. Read the accounts of the victims who, in the midst of the mayhem, were told, and I quote: "There's no death penalty—what do I have to lose," and then tell these victims that there is no merit in the recommendation that capital punishment be restored.

The American people, in my judgment, are fed up with the kind of outrage that occurred last week in the Maryland suburbs. There can be no other way to describe it. They simply are fed up. There must be a return to the idea that when a person breaks a law, he must be held personally responsible and he must be punished for it. The American people are not of a mood to accept anything less.

The instant bill would create a constitutionally supportable death penalty, limited in applicability solely to wartime treason, sabotage or espionage, or to murder committed during the course of seven specified offenses or under other limited circumstances. However, the death penalty could only be imposed if the jury, in a separate proceeding, determined that the offense was aggravated by one or more specified circumstances and that none of the enumerated mitigating factors was present.

It is my understanding the Criminal Laws Subcommittee will shortly begin consideration of this issue. Hopefully, we will be able to enact this bill with any necessary modifications in the not too distant future.

I ask unanimous consent that the text of the bill and the transmittal letter be printed in the Record immediately following my remarks along with newspaper accounts of the shocking crime referred to earlier in this statement and excerpts from the President's sixth crime message to the Congress.

There being no objection, the bill and material were ordered to be printed in the Record, as follows:

"S. 1401

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 227 of title 18, United States Code, is amended by adding after section 3562 a new section 3562A to read as follows:

"3562A. Sentencing for capital offenses.

"(a) A person shall be subjected to the penalty of death for any offense prohibited by the laws of the United States only if a hearing is held in accordance with this section.

"(b) When a defendant is found guilty of or pleads guilty to an offense for which one of the sentences provided is death, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the factors set forth in subsections (f) and (g), for the purpose of determining the sentence to be imposed. The hearing shall not be held if the Government stipulates that none of the aggravation factors set forth in subsection (g) exists or that one or more of the mitigating factors set forth in subsection (f) exists. The hearings shall be conducted.

"(1) before the jury which determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury; or

"(C) the jury which determined the defendant's guilt has been discharged by the court for good cause; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the court and of the Government.

"(c) In the sentencing hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report, if one has been

prepared, except such material as the court determines is required to be withheld for the protection of human life or for the protection of then national security. Any presentence information withheld from the defendant shall not be considered in determining the existence or the nonexistence of the factors set forth in subsection (f) or (g). Any information relevant to any of the mitigating factors set forth in subsection (f) may be presented by either the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials; but the admissibility of information relevant to any of the aggravating factors set forth in subsection (g) shall be governed by the rules governing the admission of evidence at criminal trials. The government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the factors set forth in subsection (f) and (g). The burden of establishing the existence of any of the factors set forth in subsection (f) is on the defendant.

“(d) The jury or, if there is no jury, the court shall return a special verdict setting forth its findings as to the existence or nonexistence of each of the factors set forth in subsection (f) and as to the existence or nonexistence of each of the factors set forth in subsection (g).

“(e) If the jury or, if there is no jury, the court finds by a preponderance of the information that one or more of the factors set forth in subsection (g) exists and that none of the factors set forth in subsection (f) exists, the court shall sentence the defendant to death. If the jury or, if there is no jury, the court finds that none of the aggravating factors set forth in subsection (g) exists, or finds that one or more of the mitigating factors set forth in subsection (f) exists, the court shall not sentence the defendant to death but shall impose any other sentence provided for the offense for which the defendant was convicted.

“(f) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in subsection (d) that at the time of the offense

“(1) he was under the age of eighteen;

“(2) his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;

“(3) he was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

“(4) he was a principal, as defined in section 2(a) of this title, in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

“(5) he could not reasonably have foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause, or would create a grave risk of causing, death to another person.

“(g) If no factor set forth in subsection (f) is present, the court shall impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in subsection (d) that:

“(1) if the defendant is convicted of an offense under section 794 or 2381 of this title:

“(A) the defendant has been convicted of another offense under one of those sections, committed before the time of the offense, for which a sentence of life imprisonment or death was imposable;

“(B) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; or

“(C) in the commission of the offense the defendant knowingly created a grave risk of death to another person; or

“(2) if the defendant is convicted of murder or of any other offense for which the death penalty is available if death results:

“(A) the defendant committed the offense during the commission or attempted commission of, or during the immediate flight from the commission or attempted commission of an offense under section 751, 794, 844(d), 844(f), 844(i), 1201, or 2381 of this title, or section 902(i) of the Act of August 23, 1958, as added by section 1 of the Act of September 5, 1961, and amended (75 Stat. 466, 40 U.S.C. 1472(i));

“(B) the defendant has been convicted of another federal or state offense,

committed either before or at the time of the offense, for which a sentence of life imprisonment or death was imposable;

“(C) the defendant has previously been convicted of two or more state or federal offenses with a penalty of more than one year imprisonment, committed on different occasions before the time of the offense, involving the infliction of serious bodily injury upon another person;

“(D) in the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense;

“(E) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

“(F) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value;

“(G) the defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value; or

“(H) the defendant committed the offense against

“(i) the President of the United States, the President-elect, the Vice President, or if there is no Vice President, the officer next in order of succession to the office of the President of the United States, the Vice-President-elect, or any person who is acting as President under the Constitution and laws of the United States;

“(ii) a chief of state, head of government, or the political equivalent, of a foreign nation;

“(iii) a foreign official listed in section 1116(b)(1) of this title, if he is in the United States because of his official duties; or

“(iv) a Justice of the Supreme Court, a federal law enforcement officer, or an employee of a United States penal or correctional institution, while performing his official duties or because of his status as a public servant. For purposes of this subsection, a ‘law enforcement officer’ is a public servant authorized by law or by a government agency to conduct or engage in the prevention, investigation, or prosecution of an offense.”

“SEC. 2. Section 34 of title 18, United States Code, is amended by changing the comma after the words ‘imprisonment for life’ to a period and deleting the remainder of the section.

“SEC. 3. Section 844(d) of title 18, United States Code, is amended by striking therefrom the words ‘as provided in section 34 of this title.’

“SEC. 4. Section 844(f) of title 18, United States Code, is amended by striking therefrom the words ‘as provided in section 34 of this title.’

“SEC. 5. Section 844(i), title 18, United States Code, is amended by striking therefrom the words ‘as provided in section 34 of this title.’

“SEC. 6. The second paragraph of section 1111(b) of title 18, United States Code, is amended to read as follows: ‘Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life.’

“SEC. 7. Section 1116(a) of title 18, United States Code, is amended by striking the words ‘, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life.’

“SEC. 8. Section 1201 of title 18, United States Code, is amended by inserting after the words ‘or for life’ in subsection (a) the words ‘, and if the death of any person results, shall be punished by death or life imprisonment.’

“SEC. 9. The last paragraph of section 1716 of title 18, United States Code, is amended by changing the comma after the words ‘imprisonment for life’ to a period and deleting the remainder of the paragraph.

“SEC. 10. The fifth paragraph of section 1992 of title 18, United States Code, is amended by changing the comma after the words, ‘imprisonment for life’ to a period and deleting the remainder of the section.

“SEC. 11. Section 2031, title 18, United States Code, is amended by deleting the words ‘death, or.’

“SEC. 12. Section 2113(e) of title 18, United States Code is amended:

“(a) by striking therefrom the words ‘kills any person, or’; and

“(b) by striking therefrom the words ‘or punished by death if the verdict of the jury shall so direct’ and inserting in lieu thereof the words ‘or may be punished by death if death results.’

“SEC. 13. Section 902(i)(1) of the Act of August 23, 1958, as amended (49 U.S.C. 1472(i)(1)), is amended to read as follows:

“(1) Whoever commits or attempts to commit aircraft piracy, as herein defined, shall be punished

“(A) by imprisonment for not less than twenty years; or

“(B) if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.’

“SEC. 14. The analysis of chapter 227 of title 18, United States Code, is amended by inserting after item 3562 the following new item:

‘3562A. Sentencing for capital offenses.’”

OFFICE OF THE ATTORNEY GENERAL

Washington, D.C., March 14, 1973.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: There is attached for your consideration and appropriate reference a draft bill, “To establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes.”

In *Furman v. Georgia*, 408 U.S. 238, decided June 29, 1972, the United States Supreme Court held that statutes which left the imposition of the death penalty to the unfettered discretion of a judge or a jury violated the Eighth and Fourteenth Amendments of the Constitution. The decision thereby invalidated the death penalty provisions of all federal statutes under which the death penalty is now imposable.

Furman was decided by a five-to-four vote, each justice writing a separate opinion. Of the majority, only two justices, Brennan and Marshall, argued that the Constitution mandated an absolute prohibition of the death penalty. Justices Stewart, White, and Douglas based their concurrences in the reversals on the fact that the statutes before the Court left the imposition of the death penalty to the unchecked discretion of the judge or jury, thereby permitting and occasioning irrational, selective, and discriminatory imposition. None of the opinions of the latter three justices precludes the upholding of the constitutionality of a death penalty procedure which would remove such unchecked discretion.

It is the Department's opinion that *Furman* holds unconstitutional the imposition of the death penalty as a discretionary, nonmandatory sentencing alternative, but nevertheless does not preclude the enactment of appropriate circumscribed legislation authorizing the imposition of the death penalty. It is the view of the Department that it is reasonable to conclude that the death penalty has deterrent value, and that it may provide a measure of protection against incorrigible, dangerous individuals.

In his recent message on law enforcement and drug abuse prevention, President Nixon stated:

“I am convinced that the death penalty can be an effective deterrent against specific crimes. The death penalty is not a deterrent so long as there is doubt whether it can be applied. The law I will propose would remove this doubt.

“The potential criminal will know that if his intended victims die, he may also die. The hijacker, the kidnapper, the man who throws a fire bomb, the convict who attacks a prison guard, the person who assaults an officer of the law, all will know that they may pay with their own lives for any lives that they take.”

Under the Department's proposal, capital punishment will require a post-trial sentencing hearing for the purpose of determining the existence or nonexistence of specific aggravating factors or mitigating factors. The hearing will be held before the judge who presided at the trial and before the same jury, or, under certain circumstances, before a jury specially impanelled or before the judge alone. Imposition of the death penalty by the judge will be mandatory if there is a special verdict finding the existence of one or more aggravating factors and the absence of any mitigating factor. The death sentence is prohibited if the existence of any one or more mitigating factors is found.

Among the factors which would preclude the imposition of a death sentence are the youth of the defendant, lack of capacity to appreciate the wrongfulness of the conduct, and unusual and substantial duress. Aggravating factors include, for treason or espionage, the creation of a grave risk to the national security, and for murder, the killing of another person during the commission

of the offense of kidnapping or aircraft hijacking, the assassination of the President of the United States, and the commission of murder after conviction of another offense for which a sentence of life imprisonment or death was imposable.

I urge the prompt introduction and early enactment of this legislation.

The Office of Management and Budget has advised that enactment of this legislation would be in accord with the Program of the President.

Sincerely,

_____,
Attorney General.

[From the Washington Evening Star and Daily News, Mar. 14, 1973]

ORDEAL IN TERROR

(By Toni House and Jackie Stone)

John Terry Robinson had just punched out for the day on his job as a mechanic at the Canteen Corp. in Landover and was walking to his truck when a large brown car with five men wheeled into the lot.

"Who are they?" a Canteen driver asked Robinson.

"I don't know," he replied. "Maybe they're here to rob the place."

Moments later Robinson's glib aside turned into terrifying reality as he and 24 others found themselves hostages of a group of masked men intent on robbing the company of its estimated \$25,000-\$30,000 daily receipts.

For what "seemed like days" to Robinson, he and the others were jammed in an 8-by-12 foot yellow tile and concrete men's room, where they were subjected to verbal and physical abuse as the masked men ran in and out of the bathroom, firing handguns wildly and shouting epithets.

"I think I'll throw a hand grenade in here," Robinson recalled one suspect in a red ski mask saying. Robinson said he was "the crazy one . . . the big mouth."

"There's no death penalty, what do I have to lose?" Robinson said the man shouted.

"None of us thought we'd get out of there alive," recalled another hostage, Edward Foley, as he described the ordeal. "The way they were acting, they were like maniacs . . . high on dope. I'm sure they had every intention of killing us all."

Foley was among the wounded hostages.

Robinson's keys were still dangling in the lock of his white van at the company and his wedding band was safely tucked in a roll of toilet paper in the men's room that had been his prison as Robinson told of the 60-minute ordeal while awaiting treatment at the emergency room of Prince Georges General Hospital last night.

Robinson had been pistolwhipped as had five other hostages. His light blue Canteen Corp. shirt and dark blue pants were spattered with blood.

Here's his story :

About 3:30 p.m. the 27-years-old Bladensburg mechanic said he was walking across the parking lot at the Ardmere-Ardwick warehouse when he was seized at gunpoint by two of the suspects. Robinson then was hustled inside the warehouse and herded into a men's room, which was rapidly filling with fellow employes being rounded up at gunpoint by the bandits and collected there.

The hostages were ordered to lie on the floor of the bathroom and keep quiet. They followed orders, lying in a squirming sweating heap, on the yellow concrete floor.

"Every couple of minutes" a gunman would open the bathroom door and fire wildly into the room, apparently in an effort to keep the large number of hostages cowed. Robinson could not recall how many shots were fired. It was not clear at this time if anyone was wounded in the bathroom.

On one occasion a bandit opened the door and ordered the hostages to place all of their valuables in the sink. Some threw their wallets and valuables into a pile, while others tried to hide theirs.

Robinson said he concealed his wedding ring in a toilet paper roll tube, but threw his wallet and watch into the sink to satisfy the bandits.

On another occasion the bandits opened the bathroom doors and said "they would kill anybody they caught with keys," Robinson said, which touched off a flurry of activity as men and women scattered and hid keys around the bathroom.

Raymond U. Johnson, a Dunbar Express guard (an armored car employee) who had already been wounded twice, was dragged from the bathroom by gunmen who took him to a small, unopened safe and ordered him to open it.

They returned to the room and hustled out Nancy Weaver, a coin counter, who Johnson suggested knew the combination. Johnson told police Miss Weaver said she had to have her pocketbook to open the safe, then was shot in the neck before she could get it.

At least two women, Eleanor Miller and Wendy Post, were pistol-whipped in front of the hostages in the room. Mrs. Miller said she did not know why she was hit.

Miss Post was struck in the mouth and the gun discharged. "My God," she screamed, as the blow split her mouth and knocked out several of her teeth, Robinson said.

"You better hope you have a God," he said a gunman replied. "Maybe you'd be better off back with Adam and Eve."

Robinson's chance came when he and five others were marched outside to serve as cover for the bandits as they tried to escape from police who had cordoned off the warehouse.

The gunmen kept firing at police as they lined up the hostages against the building wall in front of a line of parked company trucks.

Robinson was ordered to open a truck door but said the keys were lost inside. "I was pistol-whipped for my trouble," he said, and while the masked men considered what to do next, he shoved past them and dashed for the police line.

As he zig-zagged across the pavement, he said, the bandits fired at him three times. He heard one bullet ricochet off a truck and whistle past him.

Foley said he probably was the last of the employees herded into the men's room. The next 45 minutes were a nightmare of threats and violence.

"They said they wanted all our billfolds, watches and valuables. Then they told the service manager, Howard Dillard, to pick up the stuff and put it in a paper bag. When he said he didn't have one, they hit him, knocked him down, bashed his head against a wall and then pulled him back to his feet again. Dilliard told them to give him a bag and that's when they shot him in the arm."

The gunmen then forced Dillard to go with them to the money room and open the safe. Then Nancy Weaver was taken from the bathroom to the money room, where she was shot in the neck.

When the gunmen attempted to move the sacks of money into their car, they saw the police and ordered Foley and five other employees to act as hostages and accompany them to the loading dock. The police and the gunmen began to exchange fire.

"John Robinson was standing in front of me, and he pushed this one guy down between two trucks. Robinson took off running and managed to get away," Foley said.

"Then the guy turned around and fired twice at me. I was running toward the police lines, and I guess the second shot must have hit me. But I ran, and then crawled and ran again to the side of the building. A policeman hollered for me to 'Get down, and that's when my leg gave way.'"

Foley, the father of four lives in Lothian, Md. and fills the canteen machines at the Star-News. The gunmen's bullet still lodged in his left thigh. He said his doctor has not yet decided whether (or when) to remove the bullet.

"The doctor said it didn't do a lot of damage, and that maybe an operation to remove it, at least right now, would do more harm than good."

Asked what his thoughts were this morning, Foley replied, "At first I was just sorry to learn that the police had only killed one of them. Those kind of people shouldn't be on the street. Two of them were out on bond on murder charges already.

"As long as they (the courts) keep letting people out on bond when they're charged with major crimes, this kind of thing is going to keep on happening. They should keep this kind of criminal locked up until he can go to trial."

[From the Washington Post, Mar. 15, 1973]

VICTIMS PETRIFIED IN HOUR OF TERROR

(By Ivan G. Goldman)

"Petrified, that's the best way to describe how everyone felt," said the guard yesterday who was shot four times by holdup men during a wild robbery attempt Tuesday at a warehouse in Prince George's County.

"There was no reason to shoot any of those people," said armored car guard Raymond H. Johnson. "Everyone was too scared even to scream. I didn't think I'd ever get out alive."

Johnson was one of at least three hostages shot by five would-be robbers during the Tuesday shooting at the Canteen Corp. building in the Ardmore-Ardwick Industrial Park.

County police surrounded the building, killed one suspect and captured four others, wounding two.

Johnson, shot in both legs, the right shoulder and neck, described a bloody scene of random mayhem as the trapped, enraged bandits shot, beat and pistol-whipped unarmed hostages. He was shot when he and another guard, William T. Marks, stumbled into the holdup while making a currency pickup.

"We didn't know what was going on," Johnson said. "We were both trapped. They were already inside. They pulled their guns on us. We both tried to pull our guns, and that's when I got shot the first time, in the leg.

"Then they told us to go into the bathroom with the others. I asked them where it was, and that's when I got beat in the face with a gun. They told us to behave ourselves or we'd get killed. Then they worked over my partner, beating him for no reason at all. Then they put us in the men's room with the others."

Johnson said there was no room for him to lie down with the dozen or so other hostages, confined there. He stood bleeding in a corner, and no one attempted to administer to his wounds. "I was bleeding pretty badly," he said matter-of-factly.

"One of the gunmen stayed in there with us the whole time. That's the one I wanted to blow away. He was beating this woman. He told her to get out from behind the door. As he said it, he slapped her with the butt of his gun. I saw teeth go flying.

"He was the same one who shot me all four times. One guy (bandit) came in and told a guy to take his shirt off. He wanted it for the muzzle of his shotgun. He didn't take it off fast enough and they shot him and ripped it off him.

"Then they took me out and put me in the vault where they kept the change. They told me to open the safe, and I said I didn't know the combination. I told them who had it, and they brought her in. She wasn't fast enough or something, and they shot her in the neck. They were mad because she said the combination was in her pocketbook."

Johnson said it was difficult to keep track of time, but it soon became evident that the building was surrounded by police, and that the gunmen knew it. He said the gunmen had him begin loading bags of coins and currency from a pile onto a cart, and that he was shot three more times during the loading "because I wasn't fast enough.

"There were about 30 or 40 bags, and I loaded the better part of them. Then they told me to push the cart through the door," he said. "I did, and that's when I got away. I told police there were other people in there."

Johnson, who has worked for Dunbar Express Co., the armored car firm, four weeks, said the one-hour ordeal "took about a year, it seemed."

Johnson was in fair condition in Prince George's County Hospital and Nancy Carmen Weaver, 32, a Canteen employee, was in serious condition yesterday with a gunshot wound in the throat. Police were still piecing together details yesterday, and had not fully interviewed all witnesses.

Assistant Police Chief John W. Rhoads said he believed about five other employees were hiding in the building during the one-hour siege. They were not taken by the holdup men, he said, but they were unable to get out of the building safely as the robbers shot it out with police.

All four suspects were charged with armed robbery and murder. A Maryland

law dictates that when death results from the commission of a felony, then the perpetrators can be held legally responsible for the death.

Police said Baron Jerome Cathy, 22, of 3457 25th St. SE, was shot to death at the scene, an office-warehouse at 7650 Preston Dr., in the industrial park. They identified the four other suspects as Guy Thurston Marshall, 22, of 408 Aspen St. NW; Robert John Young, 27, of 5011 Jay St. NE; Samuel Edward Brown, 27, of 2930 Knox St. SE; and Robert Wesley Smith Jr., 27, of 823 N. Henry St., Alexandria.

Smith, Young, and Brown were under police guard yesterday in Prince George's General Hospital. Hospital authorities said Smith was in fair condition with gunshot wounds in the chest and face. Brown was in fair condition with a gunshot wound to the abdomen. Young was in good condition with multiple lacerations and a jaw fracture.

The three patients were held without bond. Marshall remained in the county jail in Upper Marlboro after County District Court Judge Howard S. Chasnow set his bond at \$125,000.

Marshall, who appeared smiling at the hearing and wearing jail denims and shower clogs, was unable to post the bond. He said nothing at the brief hearing.

County State's Attorney Arthur A. Marshall Jr. (no relation to the suspect Marshall) said Marshall and Young had pleaded guilty Friday in County Circuit Court as accessories before the fact in the Sept. 18, 1972, murder of Dennis Johnson, 26.

Each had been free on \$10,000 bond awaiting sentencing. Law enforcement officials described the murder as a narcotics-related execution. Robert E. Hall, 25, of 1234 Prairie St. NE, was convicted of first-degree murder and conspiracy to commit murder in the slaying by a County Circuit Court jury trial yesterday.

Rhoads said that about 50 county policemen surrounded the building minutes after the robbers entered the building. They were summoned, he said, by a silent alarm pressed by a Canteen employee.

The robbers had driven to the building in a stolen 1971 Cadillac, Rhoads said. He said they entered through a loading dock, pulling their guns immediately and herding employees into the men's room.

Rhoads, who directed the battle, said his men fired "only a few shots" because they knew the gunmen held hostages.

Rhoads said one of the gunmen fired at police Maj. Blair Montgomery as Montgomery, speaking through a bullhorn tried to persuade the men to throw down their guns and surrender. Only one man came out unarmed, Rhoads said, and he was captured without injury.

"In terms of criminal brutality," Rhoads said, "that was the worst crime scene I've ever seen. For no apparent reason people were shot and beaten unmercifully."

THE WHITE HOUSE,
March 14, 1973.

MESSAGE TO CONGRESS

The sharp reduction in the application of the death penalty was a component of the more permissive attitude toward crime in the last decade.

I do not contend that the death penalty is a panacea that will cure crime. Crime is the product of a variety of different circumstances—sometimes social, sometimes psychological—but it is committed by human beings and at the point of commission it is the product of that individual's motivation. If the incentive not to commit crime is stronger than the incentive to commit it, then logic suggests that crime will be reduced. It is in part the entirely justified feeling of the prospective criminal that he will not suffer for his deed which, in the present circumstances, helps allow those deeds to take place.

Federal crimes are rarely "crimes of passion." Airplane hi-jacking is not done in a blind rage; it has to be carefully planned. Using incendiary devices and bombs are not crimes of passion, nor is kidnapping; all these must be thought out in advance. At present those who plan these crimes do not have to include in their deliberations the possibility that they will be put to death for

their deeds. I believe that in making their plans, they should have to consider the fact that if a death results from their crime, they too may die.

Under those conditions, I am confident that the death penalty can be a valuable deterrent. By making the death penalty available, we will provide Federal enforcement authorities with additional leverage to dissuade those individuals who may commit a Federal crime from taking the lives of others in the course of committing that crime.

Hard experience has taught us that with due regard for the rights of all—including the right to life itself—we must return to a greater concern with protecting those who might otherwise be the innocent victims of violent crime than with protecting those who have committed those crimes. The society which fails to recognize this as a reasonable ordering of its priorities must inevitably find itself, in time, at the mercy of criminals.

America was heading in that direction in the last decade, and I believe that we must not risk returning to it again. Accordingly, I am proposing the re-institution of the death penalty for war-related treason, sabotage, and espionage, and for all specifically enumerated crimes under Federal jurisdiction from which death results.

The Department of Justice has examined the constitutionality of the death penalty in the light of the Supreme Court's recent decision in *Furman v. Georgia*. It is the Department's opinion that *Furman* holds unconstitutional the imposition of the death penalty only insofar as it is applied arbitrarily and capriciously. I believe the best way to accommodate the reservations of the Court is to authorize the automatic imposition of the death penalty where it is warranted.

Under the proposal drafted by the Department of Justice, a hearing would be required after the trial for the purpose of determining the existence or non-existence of certain rational standards which delineate aggravating factors or mitigating factors.

Among those mitigating factors which would preclude the imposition of a death sentence are the youth of the defendant, his or her mental capacity, or the fact that the crime was committed under duress. Aggravating factors include the creation of a grave risk of danger to the national security, or to the life of another person, or the killing of another person during the commission of one of a circumscribed list of serious offenses, such as treason, kidnapping, or aircraft piracy.

The hearing would be held before the judge who presided at the trial and before either the same jury or, if circumstances require, a jury specially impaneled. Imposition of the death penalty by the judge would be mandatory if the jury returns a special verdict finding the existence of one or more aggravating factors and the absence of any mitigating factor. The death sentence is *prohibited* if the jury finds the existence of one or more mitigating factors.

Current statutes containing the death penalty would be amended to eliminate the requirement for jury recommendation, thus limiting the imposition of the death penalty to cases in which the legislative guidelines for its imposition clearly require it, and eliminating arbitrary and capricious application of the death penalty which the Supreme Court has condemned in the *Furman* case.

93^D CONGRESS
1ST SESSION

S. 1401

IN THE SENATE OF THE UNITED STATES

MARCH 27, 1973

Mr. IRUSKA (for himself and Mr. McCLELLAN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To establish rational criteria for the mandatory imposition of the
sentence of death, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 227 of title 18, United States Code, is amended
4 by adding after section 3562 a new section 3562A, to read
5 as follows:

6 **“§ 3562A. Sentencing for capital offenses**

7 “ (a) A person shall be subjected to the penalty of death
8 for any offense prohibited by the laws of the United States
9 only if a hearing is held in accordance with this section.

10 “ (b) When a defendant is found guilty of or pleads
11 guilty to an offense for which one of the sentences provided

1 is death, the judge who presided at the trial or before whom
2 the guilty plea was entered shall conduct a separate sentencing
3 hearing to determine the existence or nonexistence of the
4 factors set forth in subsections (f) and (g), for the purpose
5 of determining the sentence to be imposed. The hearing shall
6 not be held if the government stipulates that none of the
7 aggravating factors set forth in subsection (q) exists or that
8 one or more of the mitigating factors set forth in subsection
9 (f) exists. The hearing shall be conducted—

10 “(1) before the jury which determined the de-
11 fendant’s guilt;

12 “(2) before a jury impanelled for the purpose of
13 the hearing if—

14 “(A) the defendant was convicted upon a plea
15 of guilty;

16 “(B) the defendant was convicted after a trial
17 before the court sitting without a jury; or

18 “(C) the jury which determined the defend-
19 ant’s guilt has been discharged by the court for
20 good cause; or

21 “(3) before the court alone, upon the motion of the
22 defendant and with the approval of the court and of the
23 government.

24 “(c) In the sentencing hearing the court shall disclose
25 to the defendant or his counsel all material contained in any

;

1 presentence report, if one has been prepared, except such
2 material as the court determines is required to be withheld
3 for the protection of human life or for the protection of
4 the national security. Any presentence information withheld
5 from the defendant shall not be considered in determining
6 the existence or the nonexistence of the factors set forth
7 in subsection (f) or (g). Any information relevant to any
8 of the mitigating factors set forth in subsection (f) may
9 be presented by either the government or the defendant,
10 regardless of its admissibility under the rules governing
11 admission of evidence at criminal trials; but the admissibility
12 of information relevant to any of the aggravating factors
13 set forth in subsection (g) shall be governed by the rules
14 governing the admission of evidence at criminal trials. The
15 government and the defendant shall be permitted to rebut
16 any information received at the hearing, and shall be given
17 fair opportunity to present argument as to the adequacy of
18 the information to establish the existence of any of the factors
19 set forth in subsection (f) or (g). The burden of establish-
20 ing the existence of any of the factors set forth in subsection
21 (g) is on the government. The burden of establishing the
22 existence of any of the factors set forth in subsection (f) is
23 on the defendant.

24 “(d) The jury or, if there is no jury, the court shall
25 return a special verdict setting forth its findings as to the

1 existence or nonexistence of each of the factors set forth in
2 subsection (f) and as to the existence or nonexistence of
3 each of the factors set forth in subsection (g) .

4 “(e) If the jury or, if there is no jury, the court finds
5 by a preponderance of the information that one or more of
6 the factors set forth in subsection (g) exists and that none
7 of the factors set forth in subsection (f) exists, the court shall
8 sentence the defendant to death. If the jury or, if there is
9 no jury, the court finds that none of the aggravating factors
10 set forth in subsection (g) exists, or finds that one or more of
11 the mitigating factors set forth in subsection (f) exists, the
12 court shall not sentence the defendant to death but shall im-
13 pose any other sentence provided for the offense for which
14 the defendant was convicted.

15 “(f) The court shall not impose the sentence of death on
16 the defendant if the jury or, if there is no jury, the court finds
17 by a special verdict as provided in subsection (d) that at
18 the time of the offense

19 “(1) he was under the age of eighteen;

20 “(2) his capacity to appreciate the wrongfulness of
21 his conduct or to conform his conduct to the require-
22 ments of law was significantly impaired, but not so im-
23 paired as to constitute a defense to prosecution;

24 “(3) he was under unusual and substantial duress,

1 although not such duress as to constitute a defense to
2 prosecution;

3 “(4) he was a principal, as defined in section 2 (a)
4 of this title, in the offense, which was committed by
5 another, but his participation was relatively minor, al-
6 though not so minor as to constitute a defense to prose-
7 cution; or

8 “(5) he could not reasonably have foreseen that his
9 conduct in the course of the commission of the offense for
10 which he was convicted would cause, or would create
11 a grave risk of causing, death to another person.

12 “(g) If no factor set forth in subsection (f) is present,
13 the court shall impose the sentence of death on the defendant
14 if the jury or, if there is no jury, the court finds by a special
15 verdict as provided in subsection (d) that—

16 “(1) if the defendant is convicted of an offense under
17 section 794 or 2381 of this title—

18 “(A) the defendant has been convicted of an-
19 other offense under one of those sections, committed
20 before the time of the offense, for which a sentence
21 of life imprisonment or death was imposable;

22 “(B) in the commission of the offense the de-
23 fendant knowingly created a grave risk of substan-
24 tial danger to the national security; or

1 “(C) in the commission of the offense the de-
2 fendant knowingly created a grave risk of death to
3 another person; or

4 “(2) if the defendant is convicted of murder or of
5 any other offense for which the death penalty is avail-
6 able if death results—

7 “(A) the defendant committed the offense dur-
8 ing the commission or attempted commission of, or
9 during the immediate flight from the commission or
10 attempted commission of an offense under section
11 751, 794, 844 (d) , 844 (f) , 844 (i) , 1201, or 2381
12 of this title, or section 902 (i) of the Act of Au-
13 gust 23, 1958, as added by section 1 of the Act of
14 September 5, 1961, and amended (75 Stat. 466, 49
15 U.S.C. 1472 (i)) ;

16 “(B) the defendant has been convicted of an-
17 other Federal or State offense, committed either be-
18 fore or at the time of the offense, for which a
19 sentence of life imprisonment or death was im-
20 posable;

21 “(C) the defendant has previously been con-
22 victed of two or more State or Federal offenses with
23 a penalty of more than one year imprisonment, com-
24 mitted on different occasions before the time of the

1 offense, involving the infliction of serious bodily
2 injury upon another person;

3 “(D) in the commission of the offense the de-
4 fendant knowingly created a grave risk of death to
5 another person in addition to the victim of the
6 offense;

7 “(E) the defendant committed the offense in
8 an especially heinous, cruel, or depraved manner;

9 “(F) the defendant procured the commission of
10 the offense by payment, or promise of payment, of
11 anything of pecuniary value;

12 “(G) the defendant committed the offense as
13 consideration for the receipt, or in expectation of the
14 receipt, of anything of pecuniary value; or

15 “(H) the defendant committed the offense
16 against

17 “(i) the President of the United States, the
18 President-elect, the Vice President, or if there
19 is no Vice President, the officer next in order of
20 succession to the office of the President of the
21 United States, the Vice-President-elect, or any
22 person who is acting as President under the
23 Constitution and laws of the United States;

24 “(ii) a chief of state, head of government,

1 or the political equivalent, of a foreign nation;

2 “(iii) a foreign official listed in section
3 1116 (b) (1) of this title, if he is in the United
4 States because of his official duties; or

5 “(iv) a Justice of the Supreme Court, a
6 Federal law enforcement officer, or an employee
7 of a United States penal or correctional insti-
8 tution, while performing his official duties or
9 because of his status as a public servant. For
10 purposes of this subsection, a ‘law enforcement
11 officer’ is a public servant authorized by law or
12 by a government agency to conduct or engage
13 in the prevention, investigation, or prosecution
14 of an offense.”

15 SEC. 2. Section 34 of title 18, United States Code, is
16 amended by changing the comma after the words “imprison-
17 ment for life” to a period and deleting the remainder of the
18 section.

19 SEC. 3. Section 844 (d) of title 18, United States Code,
20 is amended by striking therefrom the words “as provided in
21 section 34 of this title”.

22 SEC. 4. Section 844 (f) of title 18, United States Code,
23 is amended by striking therefrom the words “as provided in
24 section 34 of this title”.

1 SEC. 5. Section 844 (i), title 18, United States Code,
2 is amended by striking therefrom the words “as provided in
3 section 34 of this title”.

4 SEC. 6. The second paragraph of section 111 (b) of title
5 18, United States Code, is amended to read as follows:

6 “Whoever is guilty of murder in the first degree shall be
7 punished by death or by imprisonment for life.”

8 SEC. 7. Section 1116 (a) of title 18, United States Code,
9 is amended by striking the words “, except that any such
10 person who is found guilty of murder in the first degree shall
11 be sentenced to imprisonment for life”.

12 SEC. 8. Section 1201 of title 18, United States Code,
13 is amended by inserting after the words “or for life” in
14 subsection (a) the words “, and if the death of any person
15 results, shall be punished by death or life imprisonment”.

16 SEC. 9. The last paragraph of section 1716 of title 18,
17 United States Code, is amended by changing the comma after
18 the words “imprisonment for life” to a period and deleting
19 the remainder of the paragraph.

20 SEC. 10. The fifth paragraph of section 1992 of title 18,
21 United States Code, is amended by changing the comma after
22 the words, “imprisonment for life” to a period and deleting
23 the remainder of the section.

24 SEC. 11. Section 2031, title 18, United States Code, is
25 amended by deleting the words “death, or”.

1 SEC. 12. Section 2113 (e) of title 18, United States
2 Code, is amended:

3 (a) by striking therefrom the words “kills any
4 person, or”; and

5 (b) by striking therefrom the words “or punished
6 by death if the verdict of the jury shall so direct” and
7 inserting in lieu thereof the words “or may be punished
8 by death if death results”.

9 SEC. 13. Section 902 (i) (1) of the Act of August 23,
10 1958, as amended (49 U.S.C. 1472 (i) (1)), is amended to
11 read as follows:

12 “(1) Whoever commits or attempts to commit aircraft
13 piracy, as herein defined, shall be punished—

14 “(A) by imprisonment for not less than twenty
15 years; or

16 “(B) if the death of another person results from
17 the commission or attempted commission of the offense,
18 by death or by imprisonment for life.”

19 SEC. 14. The analysis of chapter 227 of title 18, United
20 States Code, is amended by inserting after item 3562 the
21 following new item:

“3562A. Sentencing for capital offenses.”.

We will now hear from our first witness this morning, Hon. Joseph T. Sneed, Deputy Attorney General of the United States.

Mr. Sneed, you have a prepared statement, I believe?

**STATEMENT OF JOSEPH T. SNEED, DEPUTY ATTORNEY GENERAL,
ACCOMPANIED BY RONALD GAINER, CRIMINAL DIVISION**

Mr. SNEED. That is correct, Mr. Chairman.

I am accompanied by Mr. Ronald Gainer. He is to assist me if there is any question with respect to the details of the Code that I am not able to answer.

Senator McCLELLAN. All right, you may proceed.

Mr. SNEED. Thank you, sir.

Mr. Chairman, I am pleased to have the opportunity to appear before this distinguished Subcommittee today in connection with the initial hearings on two proposals to reform the Federal criminal laws—S. 1 and S. 1400. S. 1, introduced by you, Mr. Chairman, and Senators Ervin and Hruska, is the product of the able staff of this subcommittee, and as such—and on its own merits—it deserves serious consideration and review. S. 1400, introduced by Senators Hruska, and you, Mr. Chairman, is the bill prepared by the Department of Justice and other Federal departments and agencies to reform, revise, and codify the substantive Federal criminal laws. It is upon S. 1400 that I would like to focus my remarks this morning.

Let me state at the outset something that should be obvious, but something that nevertheless warrants emphasis. We in the Department of Justice perceive the need for reform of the Federal criminal laws from the unique perspective of lawyers who work intimately with those laws on a daily basis. In a very real sense, those laws are the tools of our trade. To the extent that our tools are outmoded, unwieldy, or in disrepair, we labor under needless handicaps. It is therefore understandable that we readily concur in the view that sensible reform, revision, and codification is critically important to an effective system of justice. At the same time, it is also understandable that we approach the specifics of any such reform with discernible caution.

The genesis of the current codification effort is well known to the members of this subcommittee, many of whom have been intimately involved with this effort since its beginning. The principal impetus to codification was provided by Public Law 89-801, in which the 89th Congress created the National Commission on Reform of Federal Criminal Laws to revise the existing Federal Criminal Code and to make recommendations for its reform. An impressive membership was quickly appointed to that Commission—a membership including the chairman of this subcommittee, Senator Hruska, and Senator Ervin; an advisory committee was selected; and an unusually capable full-time staff was assembled. After 3½ years of work, the Commission produced a report containing a monumental proposal for a comprehensive and modern Federal criminal code. That report was submitted to the President and Congress on January 7, 1971, “as a work basis upon which the Congress may undertake the necessary reform of the substantive criminal laws.” It was

made clear at that time that no member of the Commission agreed with every proposal contained in the report. It was also made clear at that time that a great deal of additional work remained to be done.

Shortly after the submission of the Commission's report, former Governor Brown of California, as Chairman of the Commission, stated to this subcommittee that he regretted that the Commission had been unable to afford the Department of Justice sufficient time to prepare formal comments on the Commission's draft proposals before the preparation of the final report. At that same time, Professor Louis B. Schwartz, the Director of the Commission's staff, announced his expectation that the future work of the Department of Justice on the work basis submitted by the Commission would be "most constructive." Additionally, Mr. Richard A. Green, the Deputy Director of the Commission's staff, suggested that in reviewing the Commission's product, this subcommittee keep in mind the question "For whom are we revising and reforming and writing the Federal criminal laws?" and noted the necessity of drafting a code that is easier to understand and to work with from the standpoint of those directly involved in the Federal criminal justice system—particularly assistant U.S. Attorneys, attorneys in the Department of Justice, Federal investigators, and Federal law enforcement agents.

The President, of course, also recognized the need for extensive and constructive Department of Justice input into the codification effort. Upon receipt of the report of the National Commission, the President commended the Commission for its invaluable contribution and directed that the Department of Justice establish a team of experienced attorneys to:

Prepare a thorough evaluation of the report of the Commission, make an independent examination of the present Federal Criminal Code, and recommendations for its comprehensive reform—and, after the foregoing thorough analysis, prepare and submit appropriate legislation encompassing comprehensive reform of our Federal criminal laws.

The President further stated that throughout the course of that evaluation and analysis, the Department attorneys "work closely with the appropriate congressional committees and their staffs."

Pursuant to the President's directive, there was created within the Department of Justice a Criminal Code Revision Unit, consisting of eight full-time lawyers operating under the administrative direction of the criminal division and reporting directly to a special subcommittee of the Department's Law Enforcement Policy Committee. The unit was staffed with experienced trial and appellate attorneys from the Department and from various U.S. attorneys' offices around the country. The special subcommittee of the Law Enforcement Policy Committee was chaired for the most part of its duration by Mr. Henry E. Petersen, the Assistant Attorney General in charge of the criminal division.

The Department attorneys directly involved in this project, as members of the special unit and as members of the policy subcommittee, have engaged for over 2 years in helping to develop as just and as workable a criminal code as is possible. As to every subject

covered by the criminal code, the Department attorneys researched and evaluated the treatment of pertinent provisions in innumerable reference materials—the current statutory law; the case law under the current statutes; the draft formulations contained in the National Commission's report and in its study draft; the three volumes of working papers produced by the Commission; the Model Penal Code and its explanatory comments; the penal codes of the larger States and of the States with the most recent recodifications; the penal codes of foreign nations in those areas where it appeared that they might be instructive; the law reviews and other legal periodicals; earlier proposals introduced in the Congress concerning particular criminal law problems; earlier proposals previously suggested by Department attorneys, and the materials submitted to this subcommittee in the course of its hearings over the past 2 years. They also worked closely with the attorneys of the operating sections and divisions of the Department of Justice and of the U.S. attorneys' offices who are charged with the day-to-day prosecutions under the existing provisions of the law. We found this to be a time-consuming and tedious task. But throughout the process we considered it a highly necessary task.

Let me, if I might, interject that upon my assumption of my duties in February, I found that the level of preparation on the part of this group to which reference has just been made was exceedingly high and the briefings that they gave me over several weeks were most intensive, and as a former law school professor and dean, I can appreciate thorough preparation when I see it, and I can assure you that the preparation was most intensive and thorough.

The Department attorneys involved in this project have also worked very closely with the general counsels' offices and the staff attorneys of other interested departments of the Federal Government. They have worked with attorneys of the numerous regulatory agencies that would be affected by this legislation. They have also worked with representatives of the investigative agencies. Although we in the Department of Justice act as courtroom representatives of the other departments and agencies in such diverse fields as enforcement of the food and drug laws, the environmental protection laws, the tax laws, and the securities laws, we were well aware that this background alone was insufficient for the task, and that close cooperation with the attorneys of those departments and agencies was required to provide us with a clear understanding of the practical and legal problems encountered under existing laws. We are grateful for their ready cooperation. The bill proposed by the administration reflects in numerous instances the views and suggestions of those departments and agencies, and we know that it has been significantly improved as a result of their contributions.

I would also like to emphasize the benefits we derived from the cooperation of the Department attorneys and the staffs of the Judiciary Committees of the Senate and the House of Representatives. The countless discussions and exchanges of views between the Department attorneys and the members of the staff of this subcommittee have proved to be especially valuable. And certainly the information produced at the hearings held by this subcommittee

over the past 2 years, and the documents submitted for inclusion in the hearing records, have been of real assistance.

Although I have noted that we have relied upon numerous sources, it should be acknowledged that our principal indebtedness is, first, to the "work basis" supplied by the Commission—particularly in its general organization, format, and drafting technique—and, second, to those elements of the current statutory law and case law that have proved particularly effective.

I hope you will find that the product of the Department's effort, which is now before you as S. 1400, reflects the care that has gone into its preparation. It is as clear, as equitable, and as realistic a proposal as we could develop in the time available. And let me stress that we have constantly sought to produce not just a useful assemblage of prosecutor's tools, but also as fair a series of provisions as could be drafted. The critical importance of fairness in a criminal code is apparent to us as citizens. It is also apparent to us as lawyers whose work under unfair statutes would very quickly and very properly be undone by the courts. This is a matter of great importance to us. It is, after all, the attorneys of the Department of Justice who will have to work on a daily basis under any new code and who will have to prosecute under that code, and who will have to support the individual provisions of that code against constitutional and other legal attacks in the Federal appellate courts. Therefore, for these dual reasons, we have consistently considered fundamental fairness—to potential defendants, to defendants, and to society as a whole—to be an imperative.

Let me mention briefly a few things concerning the substance of S. 1400.

Part I of the proposed code contained in S. 1400 sets forth the general provisions and principles with respect to such matters as common definitions, the treatment of Federal jurisdiction, the mental states involved in the commission of Federal offenses, the principles of individual and organizational liability, and general defenses to Federal criminal prosecutions. They are drafted in the Commission format and they adopt several of the innovations suggested by the Commission and by others. For the most part, though, these provisions reflect the existing state of Federal law as found in the decided cases, and their codification will be of primary value in helping to clarify some of the less understood aspects of the criminal laws.

One innovative feature introduced in part I—the treatment of Federal jurisdiction—may warrant a particular reference. The most fundamental innovation proposed by the Commission was to state as a Federal offense the basic criminal misconduct which occurs under circumstances giving rise to Federal jurisdiction, rather than to state the offense in terms of an affront to the Federal jurisdictional factor itself. As the members of this subcommittee are well aware, this approach permits far greater clarity in drafting, allows the consolidation of numerous current offenses consisting of essentially the same conduct, and affords an opportunity for uniformity of judicial interpretation. Yet, as has been pointed out by several sources, among the disadvantages of this approach, at least as it is employed

by the Commission, is the tendency to expand the reach of Federal jurisdiction. We believe that we have devised a satisfactory resolution of this potential difficulty which permits virtually all the advantages achieved by the Commission's approach and yet permits the confinement of Federal jurisdiction to the bounds of current law. I am referring, first, to the device of setting forth in each offense a subsection referring to the particular individualized bases of Federal jurisdiction applicable solely to that offense, and second, to the curtailing of the concept of ancillary or "piggyback" jurisdiction to specified situations in which the concept would be particularly advantageous. By this minor variation on the Commission's approach to Federal jurisdiction, the circumstances giving rise to Federal jurisdiction over individual offenses may be tailored to the precise scope of current law. This technique permits the avoidance of any expansion of Federal jurisdiction such as would cause a material encroachment on areas of State sovereignty. It has been used in S. 1400 to draft a jurisdictional coverage that is much more restrictive than that employed in S. 1, and materially more restrictive than that employed in the report of the Commission. In view of the fundamental importance of this matter to the drafting of the Federal criminal code, I commend it to your careful attention.

Part II of the code contained in S. 1400 lists the specific Federal offenses. You will find that they are written in a far more concise and straightforward manner than their current law equivalents. This is partly the result of the general change in the approach to Federal jurisdiction, and partly the result of a concentrated effort to weed out excess verbiage without removing language that has received useful judicial interpretation. You will also find that obsolete offenses have been discarded, loopholes have been closed, and new offenses have been proposed where necessary. Certainly from the area of organized crime to the area of white collar crime, and from the civil rights offenses to the sex offenses, the potential for effective prosecutions has been increased.

Part III of the code contained in S. 1400 encompasses the sentencing provisions. In general, while the use of sentencing categories and certain other aspects of the Commission's proposal have been adopted, the applicable terms of imprisonment reflect the range of current law, and the applicable fines are significantly higher than either those currently provided or those recommended by the Commission. The provisions by which they are imposed, however, have been designed to tailor sentences to fit the individual offender as well as the offense committed. These sentencing provisions, in combination with the provisions of earlier parole eligibility and required postrelease supervision, should help to strike the power balance between the needs of society and the needs of individual defendants. The last sentencing provision sets forth a constitutionally supportable death penalty, limited in applicability to treason, sabotage, espionage, or murder committed in certain enumerated circumstances. Its details will be discussed with you this morning by Mr. Robert Dixon, the Assistant Attorney General for the Office of Legal Counsel. It is, we believe, as meticulously impartial a death penalty provision as can be devised.

Let me close with this observation. Although S. 1400 contains several provisions which can be expected to create controversy, it would be a grave mistake to view the code it proposes—or the code S. 1 proposes—in terms of such controversial issues as capital punishment, gun control, or dissemination of classified government information. These are important issues that individually warrant thoughtful discussion, but they are not the heart of the code. The heart of the code consists of its essential structure and format, and the literally hundreds of improvements it proposes. It is with this recognition that we must focus our efforts. And it is with this recognition—and with dispassionate reason and bipartisan determination—that this Nation will be able to achieve a fair, rational, and workable code of Federal criminal law which is responsive to the demands of our complex 20th-century society.

Mr. Chairman, we in the Department of Justice look forward to the opportunity in the next several months to testify before this subcommittee and to supply explanatory materials on the innumerable individual issues presented. We look forward to having our attorneys work with the members of your staff on the multitudinous technical details that must be resolved. And we look forward to this subcommittee's reference to the full Judiciary Committee and to the Senate of a new Federal Criminal Code.

Thank you, Mr. Chairman.

Senator McCLELLAN. Thank you very much, Mr. Sneed.

Any questions, Senator?

Senator HRUSKA. I have several questions, Mr. Chairman, but I would suggest that there be inserted in the record in the appropriate place the personnel of the Criminal Code Unit to which the Deputy Attorney General referred. They have labored long on a tedious and difficult task. I think this bit of recognition would be——

Senator McCLELLAN. Do you have the names?

Senator HRUSKA. I have them.

Senator McCLELLAN. Let them be printed in the record at this point.

[The list referred to follows:]

CRIMINAL CODE UNIT

UNITED STATES DEPARTMENT OF JUSTICE

1 Shirley Baccus-Lobel	10 Peter Rient
2 David P. Bancroft	11 David Robinson
3 Edgar N. Brown	12 Richard Rosenfield
4 Larry L. Dier	13 Norman Sepenuk
5 Ezra Friedman	14 Karen Scrivseth
6 Ronald L. Gainer	15 Robert Steinberg
7 Frederick D. Hess	16 Paul C. Summitt
8 Robert Keuch	17 Charles Turner
9 Harold D. Koffsky	18 J. Theodore Wiesman

Senator McCLELLAN. Mr. Counsel, any questions?

Mr. BLAKEY. No, sir.

Senator McCLELLAN. Thank you very much, Mr. Sneed. We will be calling on you further during the course of the processing of these bills, I am sure.

Mr. SNEED. Thank you, Mr. Chairman.

Senator McCLELLAN. The next witness is Mr. Robert Dixon, Assistant Attorney General, Office of Legal Counsel.

Professor Dixon has been a consultant in the field of public law for several years. He is a former professor of law at various universities including George Washington University. He was a consultant to the National Commission on Reform of Federal Criminal Law, particularly on the question of immunity. Professor Dixon has testified here before and was very helpful during our processing of title II, the immunity title, of the Organized Crime Control Act.

He later joined in filing a brief in the immunity case in which the Supreme Court sustained the constitutionality of that title.

We are very grateful for his past assistance and we welcome him here today. I am confident you will make a substantial contribution to our deliberations on these measures.

Very well, Mr. Dixon; you may proceed.

Will you identify your associates?

**STATEMENT OF ROBERT DIXON, ASSISTANT ATTORNEY GENERAL,
OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE; ACCOMPANIED BY RONALD L. GAINER, CRIMINAL DIVISION AND JAMES KELLEY, OFFICE OF LEGAL COUNSEL**

Mr. DIXON. I have with me Mr. Ronald Gainer, who also appeared with Dean Sneed, again as a member of the Criminal Division, an attorney. I also have with me Mr. James Kelley who is one of my attorneys in the Office of Legal Counsel, Department of Justice.

Senator McCLELLAN. Very well.

Mr. DIXON. Mr. Chairman, I would propose that I condense my statement somewhat and present it in something less than its full version, and would appreciate the full version being placed in the record.

Senator McCLELLAN. The prepared statement of Mr. Dixon may be placed in the record in full at this point. You may proceed, Mr. Dixon.

[The statement referred to follows:]

STATEMENT OF ROBERT G. DIXON, JR., ASSISTANT ATTORNEY GENERAL OFFICE OF LEGAL COUNSEL, ACCOMPANIED BY RONALD GAINER, CRIMINAL DIVISION AND JAMES KELLY, OFFICE OF LEGAL COUNSEL

Mr. Chairman and Members of the Subcommittee, I am pleased to have the opportunity to present the position of the Department of Justice with respect to capital punishment, as provided for by Chapter 24 in S. 1400, the Administration's proposed "Criminal Code Reform Act of 1973." The Department of Justice believes that the death penalty is an appropriate sentence for certain offenders found guilty of a narrow range of federal crimes which have a premeditated quality, are heinous in character, or involve a vitally important federal interest. In such cases, the death penalty serves recognized aims of the criminal law. It deters such conduct by others in the future; it incapacitates the offender; and, to borrow a phrase from Justice Stewart's concurring opinion in the now-famous *Furman* decision, it promotes "the stability of a society governed by law." *Furman v. Georgia*, 408 U.S. 238, 308 (1972). In our judgment, in the small number of cases in which the death penalty would be applicable, these societal interests would clearly outweigh rehabilitative concerns.

Federal criminal statutes presently on the books providing for the death penalty typically authorize its imposition in the discretion of the jury. Prior to

last year's *Furman* decision, the Supreme Court has approved and, indeed, emphasized this near-total commitment to jury discretion with respect to the death sentence in federal cases. See *Andres v. United States*, 333 U.S. 740, 743 (1948); *Winston v. United States*, 172 U.S. 303, 313 (1899). Similarly, State statutes carrying the death penalty usually authorize its discretionary imposition by the jury or judge, without standards to guide the exercise of discretion. Less than two years ago, the Supreme Court sustained that procedure over Fourteenth Amendment due process and equal protection objections. *McGautha v. California*, 402 U.S. 183 (1971).

Last year's Supreme Court decision in *Furman v. Georgia*, 408 U.S. 238 (1972), however, cast considerable doubt upon the constitutionality of most federal and State death penalty statutes. In *Furman*, a 5 to 4 majority of the Court held that imposition of the death penalty in three State cases involving two rapists and one murderer constituted "cruel and unusual punishments" in violation of the Constitution. The penalties in those cases had been imposed by juries as discretionary judgments—the procedure, as I have said, which is typical under current federal and State law. Since the *Furman* decision was based on the Eighth Amendment (as applied to the States by the Fourteenth Amendment), it also applies to federal crimes.

The precise holding in *Furman* is, to say the least, difficult to state. Each of the nine Justices wrote a separate opinion, expressing a wide contrariety of views, spread over 233 pages of the United States Reports. There was no opinion for the Court. The *per curiam* order of reversal rested on the votes of five Justices—Douglas, Brennan, Stewart, White and Marshall—each of whom wrote a concurring opinion in which none of their brethren joined. The four dissenting votes—cast by Chief Justice Burger and Justices Blackmun, Powell and Rehnquist—found no constitutional infirmity in the death penalty *per se*, or in the manner of its imposition in the cases before the Court. Three of the dissenting opinions, by the Chief Justice, and Justices Powell and Rehnquist, were joined by all four of the dissenting Justices.

A detailed analysis of the nine opinions in *Furman* would unduly lengthen my oral statement. I am submitting for the hearing record such an analysis. However, I believe it would be useful at this point to state very briefly what appear to be the principal thrusts of the key opinions, and the practical effect of the *Furman* decision from the standpoint of future legislative initiatives.

Only two Justices, Brennan and Marshall, concluded, on the basis of somewhat differing theories, that the death penalty is unconstitutional *per se*. Justices Stewart, White and Douglas based their concurrences on their conclusions that the statutes before the Court, in leaving the imposition of the death penalty to the unfettered discretion of the judge or jury, led to arbitrary and discriminatory impositions of the penalty. Each of the latter three Justices made it clear that they were not reaching the question whether mandatory death penalty statutes would be invalid. The practical effect of *Furman*, therefore, appears to be to leave to the Congress and the State legislatures some leeway to devise new statutory mechanisms for the imposition of the death penalty, provided such mechanisms restrict sentencing discretion and ensure increased rationality in patterns of death sentence imposition. This reading of *Furman* is supported by the detailed analysis of the decision I am submitting for the record and particularly by the following statement from Justice Burger's dissenting opinion—

"While I would not undertake to make a definitive statement as to the parameters of the Court's ruling, it is clear that if state legislatures and the Congress wish to maintain the availability of capital punishment, *significant statutory changes will have to be made*. Since the two pivotal concurring opinions [Justices Stewart and White] turn on the assumption that the punishment of death is now meted out in a random and unpredictable manner, *legislative bodies may seek to bring their laws into compliance with the Court's ruling by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed.*" *Id.* at 400 (emphasis added and footnote omitted).

Under *Furman*, there are essentially three possible legislative approaches to reinstatement of the death penalty—(1) require imposition of the death penalty as an automatic consequence of conviction for the offense; (2) provide criteria for the discretionary imposition of the penalty; or (3) a combination

of these approaches. Numerous variations and combinations are possible within these three approaches.

Strict mandatory death penalties, as they were administered under the old common law, might be considered valid under a technical reading of *Furman*, but it is uncertain whether they would survive constitutional attack. Chief Justice Burger in his dissenting opinion hypothesized and condemned such an approach in these terms—

“Real change would clearly be brought about if legislatures provided mandatory death sentences in such a way as to deny juries the opportunity to bring in a verdict on a lesser charge; under such a system, the death sentence could only be avoided by a verdict of acquittal. If this is the only alternative that the legislatures can safely pursue under today’s ruling, I would have preferred that the Court opt for total abolition.” 408 U.S. at 401.

Common-law mandatory death penalties were highly objectionable on many grounds. In addition to humanitarian considerations, the Department of Justice as the federal prosecutor would oppose a strict mandatory approach to the problem for practical reasons. Experience with “jury nullification” under the common law—where juries simply refused to convict regardless of the strength of the evidence when they considered death an unwarranted penalty in the particular case—counsels strongly against that approach. See *McGautha v. California*, 402 U.S. 183, 199 (1971).

At the opposite end of the permissible legislative spectrum under *Furman* is the approach of providing criteria to guide the discretionary imposition of the death sentence. This is essentially the approach adopted by the American Law Institute in the Model Penal Code. The circumstances of aggravation and mitigation selected by the draftsmen of the Model Penal Code were not intended to be exclusive. The Code provides that the sentencing authority should “take into account the aggravating and mitigating circumstances enumerated . . . and any other facts that it deems relevant,” and that the court should so instruct the jury when the issue is submitted to a jury. Model Penal Code, § 201.6 (Proposed Official Draft, 1962). A very similar provision, adapted from the Model Penal Code, was included as an alternative in the Final Report of the National Commission on the Reform of Federal Criminal Laws. See Provisional Chapter 36.

A somewhat similar approach is also embodied in the capital punishment provisions of S. 1, the “Criminal Justice Codification, Revision and Reform Act of 1973,” recently introduced by you, Mr. Chairman, with the cosponsorship of Senators Ervin and Hruska. See § 1-4E. Although certain of the circumstances of aggravation and mitigation set forth in S. 1 differ from those in the corresponding Model Penal Code provision, and the two proposals also differ in other particulars, they share the important feature of discretionary imposition. That is, even if several aggravating and no mitigating circumstances are found by the judge or jury to exist, the death penalty still need not be imposed.

The Department of Justice gave very serious and thorough consideration to proposing a discretionary imposition mechanism similar to that provided for in S. 1. And the mechanism we are proposing is similar to S. 1’s in many respects. However, for reasons I shall advert to later in my statement, we concluded that a mechanism combining discretionary and mandatory features would be preferable on policy grounds and would have a better chance of withstanding constitutional attack. Let me turn now to a description of our death penalty proposal.

Chapter 24 of S. 1400, entitled “Death Sentence” and appearing at pages 153–156 of the bill, provides a sentencing mechanism designed to maximize fairness and justice in the individual case and rationality in patterns of imposition of the death sentence. I will attempt to summarize briefly its principal features in a nontechnical fashion.

First, the possibility of a death sentence would only arise upon conviction of one of four offenses: treason, sabotage, espionage and murder.

Second, the bill sets forth different sets of aggravating circumstances with respect to the national security offenses, on the one hand, and murder, on the other. For example, with respect to the national security offenses, the death penalty could only be imposed if the defendant had been convicted of another grave national security offense committed before the time of the offense in question, or if one of two other specific aggravating circumstances were present. Following conviction in a murder case, the death penalty could only be

imposed if, for example, the victim had been the President of the United State, or if the defendant were shown to be a hired killer, or if the murder occurred during a kidnapping or aircraft hijacking. Several other specifically described aggravating circumstances are provided for in the case of murder.

Third, the bill sets forth five circumstances under which imposition of the death penalty would be *precluded*. Thus, regardless of the existence of one or more of the specified aggravating circumstances in a particular case, the death sentence could not be imposed if, for example, the defendant was under the age of eighteen, his mental capacity was significantly impaired, he acted under unusual duress, or he was an accomplice whose participation in the offense was relatively minor.

Fourth, unlike the Model Penal Code provision, the list of aggravating and precluding circumstances is exclusive. This feature is designed to prevent irrelevant appeals to the judge or jury by either the prosecutor or the defense. Appropriate instructions from the judge would also help to prevent the jury from speculating and deciding on the basis of irrelevant factors not presented to them.

Fifth, the decision for or against the death penalty would follow automatically from the findings of the judge or jury as to the existence or non-existence of aggravating or precluding circumstances. Thus, if one or more of the aggravating circumstances, and *no* precluding circumstance, were found to exist, the judge would be required to impose the death sentence. By contrast, even if several aggravating circumstances were found to exist, if *any* precluding circumstance were also found to exist, the defendant could not be sentenced to death. This mandatory feature is, in my judgment, the most important difference between our proposal and the comparable provisions of S. 1, the Model Penal Code, and the Report of the National Commission.

Finally, the bill provides for a separate proceeding before the judge or a jury to determine the death penalty issue. The principal purpose of this feature, also contained in S. 1, is to allow the defendant to take the stand following conviction, and to introduce evidence relevant to the question of punishment, but perhaps irrelevant to the question of guilt of the offense charged.

The major premise of our proposal—consistent with seven of the nine *Furman* opinions—is the promotion of rationality and even-handedness in the imposition of the death penalty. That overall goal would be promoted principally in three ways.

First, the list of offenses to which the death penalty is presently applicable would be reduced. For example, the death penalty would no longer be applicable to such federal offenses as rape and kidnapping where death does not result.

Second, fairness and rationality would be promoted by providing standards for juries and judges to follow in imposing the death sentence. These features of the proposal are directly responsive to the suggestions for legislation made by Chief Justice Burger in the passage I quoted earlier from his dissenting opinion in *Furman*.

Third, the separate sentencing proceeding (sometimes called a bifurcated trial) ensures that the defendant will have full opportunity to present evidence relevant to the existence of aggravating or precluding factors. Under the federal practice and most State practices prior to *Furman*, guilt and sentencing in capital cases were determined by the jury in a single proceeding. This often effectively discouraged the defendant from taking the stand because evidence of a prior criminal record could then be introduced against him, and it precluded submission of evidence relevant to sentencing but irrelevant to guilt. See *McGautha v. California*, *supra* at 194. Provision for a separate sentencing proceeding should go far to promote fairness in the imposition of the death penalty.

As indicated earlier, the Department of Justice proposal differs from the S. 1 and essentially similar sentencing mechanisms for both policy and constitutional reasons. On the policy level, it is our view that the death penalty should in fact be imposed when one or more of the proposed aggravating circumstances is present and there is no precluding circumstance. But if the sentencing authority is left to a discretionary judgment even in those circumstances, we would be concerned that any real hope for emergence of rational patterns in sentencing in capital cases would be severely eroded. Beyond that, the imposition of the death sentence is, of course, a heavy responsibility. In our judg-

ment, the Congress should shoulder a substantial portion of that responsibility by telling juries and judges, as clearly as possible, the circumstances in which the ultimate penalty is to be meted out.

We also believe that our proposal stands a somewhat greater chance of surviving constitutional attack than does S. 1's discretionary sentencing mechanism. As Justice White pointed out in his concurring opinion in *Furman*, under the discretionary provisions of present capital punishment statutes, "[L]egislative will is not frustrated if the death penalty is never imposed." 408 U.S. at 311. And Justice Stewart, in his concurring opinion, quoted Justice White's statement with the observation that it was "tellingly put." 408 U.S. at 309. Justice White's statement would be equally applicable to S. 1's discretionary sentencing mechanism. Moreover, a major theme of Justice White's concurring opinion, from the standpoint of society's interest in deterrence of crime, was that the interest "would not be substantially served where the penalty is so seldom invoked that it ceases to be the credible threat essential to influence the conduct of others." 408 U.S. at 312. Thus, the very infrequency of the imposition of the death penalty, portended by a discretionary system in the range of cases in which that penalty would be appropriate, may well present a constitutional problem.

I do not mean to suggest that S. 1's death sentence provisions are not constitutionally defensible. I want to emphasize, however, that we at the Justice Department, as prosecutors, are profoundly concerned that a Congressional enactment governing the death penalty be sustained in the courts, and we believe that the concept of S. 1400 is more likely to be sustained.

In conclusion, we believe that the death sentence provisions of S. 1400 represent sound legislative penal policy, and that they stand an excellent chance of being sustained by the Supreme Court. We urge their favorable consideration by this Subcommittee.

Mr. DIXON. I am pleased to have the opportunity to present the position of the Department of Justice with respect to capital punishment as provided for by chapter 24 in S. 1400, the administration's proposed Criminal Code Reform Act of 1973, S. 1400, as cosponsored by you, Mr. Chairman, and Senator Hruska.

The Department of Justice believes that the death penalty is appropriate for certain offenders found guilty of a narrow range of Federal crimes which have a premeditated quality, are heinous in character, or involve a vitally important Federal interest. We feel we have here a shared purpose regarding those three interests, with S. 1, which is also before the subcommittee.

We feel that an appropriately devised death penalty statute would deter harmful conduct by others in the future, would incapacitate the offender, and, to borrow a phrase from Justice Stewart's concurring opinion in the *Furman*¹ decision, it would promote "the stability of a society governed by law."

As we all know, a problem the Supreme Court found with the existing death penalty statutes centers in the area of the discretion given to the judge and the jury to impose the death penalty. Such discretion was a feature of prior Federal criminal law, and as far as that goes, existing Federal criminal law, and virtually all State legislation.

The *Furman* decision by the Supreme Court last spring casts great doubt upon the constitutionality of both Federal and State death penalty statutes because of the discretionary feature.

A detailed analysis of the nine opinions in *Furman* would unduly lengthen my statement. I am submitting for the hearing record a detailed analysis. (Analysis appears at p. 5237.)

¹ *Furman v. Georgia*, 408 U.S. 238, 308 (1972).

The practical effect of *Furman* appears to be to leave to the Congress and to the State legislatures some leeway to devise new statutory mechanisms for the imposition of the death penalty, provided such mechanisms restrict sentencing discretion and insure increased rationality in patterns of death sentence imposition.

Under *Furman*, there appear to be essentially three possible legislative approaches to reinstatement of the death penalty. One would be to require imposition of the death penalty as an automatic consequence of conviction for the offense. Second would be to provide criteria for the discretionary imposition of the penalty. Third would be to devise some combination of these two approaches.

Let us take up the first approach, a very stringent statute with very little discretion. Strict mandatory death penalties as they were administered under the old common law might be considered valid under a technical reading of *Furman*, but it is uncertain whether they would survive constitutional attack. Chief Justice Burger, in his dissenting opinion, hypothesized and questioned such an approach in these terms:

Real change would clearly be brought about if legislatures provided mandatory death sentences in such a way as to deny juries the opportunity to bring in a verdict on a lesser charge; under such a system, the death sentence could only be avoided by a verdict of acquittal. If this is the only alternative that the legislatures can safely pursue under today's ruling, I would have preferred that the court opt for total abolition.

At the opposite end of the permissible legislative spectrum under *Furman* is the approach of providing criteria to guide the discretionary imposition of the death sentence. This approach is adopted by the American Law Institute in the Model Penal Code. It also underlies to a certain extent the final report of the National Commission on the Reform of Federal Criminal Laws, and likewise a similar approach is embodied in S. 1, the Criminal Justice Codification, Revision and Reform Act of 1973, which was introduced by you, Mr. Chairman and cosponsored by Senators Ervin and Hruska.

The Department of Justice gave serious and thorough consideration to proposing a discretionary imposition mechanism similar to that provided for in S. 1. The mechanism we are proposing is similar to S. 1 in many respects. However, for reasons I shall advert to in a moment, we did conclude that a mechanism combining discretionary and mandatory features would be preferable on policy grounds, and would have a better chance of withstanding constitutional attack.

Let me turn now to the description of the death penalty proposal in S. 1400, chapter 24. This chapter provides a sentencing mechanism to maximize fairness and justice in the individual case, and also rationality in overall patterns of imposition of the death sentence. There are six principal features.

First, the possibility of a death sentence would only arise upon conviction of one of four offenses, treason, sabotage, espionage, and murder.

Second, the bill sets forth separate sets of aggravating circumstances with respect to the national security offenses on the one hand, and murder on the other. For example, with respect to the na-

tional security offenses, the death penalty could only be imposed if a defendant had been convicted of another grave national security offense committed before the time of the offense in question, or if one of two other aggravating circumstances were present.

Following conviction in a murder case, the death penalty could only be imposed if, for example, the victim had been the President of the United States or the defendant were shown to be a hired killer or if the murder occurred during a kidnapping or aircraft hijacking. Several other precisely described aggravating circumstances are provided for in the case of murder.

Third, the bill sets forth five circumstances under which imposition of the death penalty would be precluded. Thus, regardless of the existence of one or more of the aggravating circumstances in a particular case, a death sentence could not be imposed if, for example, the defendant was under the age of 18, his mental capacity was impaired significantly, he acted under unusual duress, or he was an accomplice whose participation in the offense was relatively minor.

Fourth, unlike the Model Penal Code provision, the list of aggravating and precluding circumstances is exclusive. This feature is designed to prevent irrelevant appeals to the judge or jury by either the prosecutor or defense. Appropriate instructions from the judge would also help prevent the jury from speculating and deciding on the basis of irrelevant factors.

Fifth, the decision for or against the death penalty would follow automatically from the findings of the judge or jury as to the existence or nonexistence of aggravating or precluding circumstances. Thus where one or more of the aggravating and no precluding circumstances were found to exist, the judge would be required to impose the death sentence. By contrast, even if several aggravating circumstances were found to exist, if any precluding circumstances were also found to exist, the defendant could not be sentenced to death. This mandatory feature or qualified mandatory feature is, in my judgment, the most important difference between our proposal and the comparable provisions of S. 1, and also the Model Penal Code and the final report of the National Commission.

Sixth, and finally, the bill provides for a separate proceeding before a judge or jury to determine the death penalty issue. The principal purpose of this feature is to allow the defendant to take the stand following conviction and to produce evidence relevant to the question of punishment, but perhaps irrelevant to the question of guilt of the offense charged.

The major premise of our proposal—consistent with seven of the nine opinions in the *Furman v. Georgia* case—is the promotion of rationality and evenhandedness in the imposition of the death penalty. That overall goal would be promoted principally in three ways.

First, the range of offenses to which the death penalty is presently applicable would be reduced.

Second, fairness and rationality would be promoted by providing standards for juries and judges to follow in imposing the death sentence.

Third, the separate sentencing proceeding, sometimes called a bifurcated trial, insures that the defendant will have full opportunity

to present evidence relevant to the existence of aggravating or precluding factors.

As indicated earlier, the Department of Justice proposal differs from the S. 1 proposal for both policy and constitutional reasons. On the policy level, it is our view that the death penalty should in fact be imposed when one or more of the proposed aggravating circumstances is present and there is no precluding circumstance. By contrast, if the sentencing authority is left to a discretionary judgment, even in those circumstances, we would be concerned that any real hope for emergence of rational patterns in sentencing in capital cases would be severely eroded.

Imposing a death sentence is, of course, a heavy responsibility. In our judgment, the Congress should shoulder a substantial portion of that responsibility by telling judges and juries as clearly as possible the circumstances in which the ultimate penalty is to be meted out.

We also believe that our proposals stand a somewhat greater chance of surviving constitutional attack than does S. 1's more discretionary sentencing mechanism. As Justice White pointed out in his concurring opinion in *Furman*, under the discretionary provisions of present statutes, and I quote Justice White, "Legislative will is not frustrated if the death penalty is never imposed."¹ Justice Stewart, in his concurring opinion, quoted Justice White's statement with the observation it was "tellingly put."² Justice White's statement would be equally applicable to S. 1's discretionary sentencing mechanism.

I do not mean to suggest that S. 1's death sentencing provisions are not constitutionally defensible. I merely want to emphasize, however, that we at the Department of Justice, as prosecutors, are profoundly concerned that a congressional enactment governing the death penalty be sustained in the courts, and we believe that the concept of S. 1400 is more likely to be sustained.

In conclusion, we believe that the death sentence provisions of S. 1400 represent sound legislative penal policy and that they stand an excellent chance of being sustained by the Supreme Court. We urge their favorable consideration by this subcommittee.

Thank you.

Senator McCLELLAN. Mr. Dixon, I would like to submit to you some questions that you may answer for the record. I had no opportunity to read your statement prior to your testimony. It is very interesting, very informative, and there are some points that I would like to question you about.

I will prepare some written questions that you may answer for the record.

Mr. DIXON. Thank you, Mr. Chairman. We shall be pleased to do that. [See p. 5242.]

Senator McCLELLAN. One thought occurred to me, the Court, as I understand in the *Furman* case, held that the taking of human life by the State, by the Government in the cases before it would constitute cruel and unusual punishment, did it not?

Mr. DIXON. Yes, it did.

¹ 408 U.S. at 311.

² 408 U.S. at 309.

Senator McCLELLAN. Is this not an unusual ruling? Have not courts heretofore sustained capital punishment?

Mr. DIXON. Yes, I believe this decision was one of the more unusual decisions, perhaps, of the Supreme Court. The Court itself produced nine opinions.

Senator McCLELLAN. There are nine separate opinions in the *Furman* case?

Mr. DIXON. Yes. There were nine opinions of the Court in *Furman v. Georgia*.

Senator McCLELLAN. The death penalty has been questioned before. Has it not been sustained by the Court repeatedly over the years?

Mr. DIXON. Yes, it most certainly has. The death penalty has been in the law in America for centuries. It was in the law at the time our Constitution was framed. There is no historical foundation for the viewpoint that the Founding Fathers would have viewed the death penalty as being cruel or unusual, within the meaning of the eighth amendment, as far as I can ascertain. Indeed, the *McGautha* case¹ in the Supreme Court only about 2 or 3 years ago involved this very same question. There the Court had before it two murder cases, one from California and one from Ohio—first degree murder cases. The laws of Ohio and California, like the laws of the other States, and like Federal law, authorized the death penalty, and did submit it to the discretion of the jury, or to the court sitting without a jury, in the conventional fashion. Faced only 2 or 3 years ago with that issue, the Supreme Court sustained the death penalty against attacks under the due process clause and equal protection clause of the 14th amendment. Justice Harlan's opinion was scholarly, as always is the case with Justice Harlan. He reviewed the past historical record in detail, way back in ancient English history. He reviewed the experience and legislation concerning the death penalty during our own constitutional history, and he concluded that it was not unconstitutional. So in view of that decision merely 2 years ago, the decision in *Furman v. Georgia* could be said to be quite unusual.

Senator McCLELLAN. Well, the Court, 2 years later, after holding the death penalty constitutional in cases in two separate States with comparable laws, leaving the discretion of the punishment to the jury, reversed itself, is that correct?

Mr. DIXON. Yes, that is correct.

Senator McCLELLAN. The Supreme Court 2 years ago held it would be constitutional. Two years later, by nine different opinions, they, in effect, five of the nine Justices, I believe, held it was unconstitutional, that it constituted cruel and unusual punishment.

Mr. DIXON. The only distinction that might be suggested as between the *McGautha* decision 2 years ago and *Furman v. Georgia* in the last term of Court is that *McGautha* was considered under the due process and the equal protection of the laws clauses: whereas *Furman* was argued on an eighth amendment basis as incorporated through the fourteenth.

However, our due process concept is such a broad concept that it

¹ *McGautha v. California*, 402 U.S. 183 (1971).

is hard, I think, to reconcile a due process decision two years ago in *McGautha* saying that capital punishment does not violate due process with the decision of last spring, *Furman v. Georgia*, saying that it did violate the eighth amendment.

Senator McCLELLAN. I am a little intrigued by this. I believe up to now the right of self-defense has been sustained through the history of this Nation as including the right to take human life if necessary to preserve your own life; is that not fundamental to our system of criminal jurisprudence?

Mr. DIXON. I believe that is fundamental to our system of criminal jurisprudence, and perhaps it is fundamental in part because it is grounded on a very basic psychological emotional structure in most men, which structure impels them to act in self-defense and indeed may even compel them to act in retribution for the death of one of their intimate family members. Therefore, an additional factor for support of the death penalty in addition to its deterrence quality—and though there are differences on deterrent effect, no one has ever found no deterrence in the death penalty—addition to the deterrence factor, there is this deep emotional retribution factor which indeed the Supreme Court noted. As I recall, the Supreme Court in the *Furman v. Georgia* decision last spring—here I should speak of the Justices, because there were nine opinions—on several occasions—there is a self-defense factor—and the Supreme Court also recognized a retribution factor which is analogous to the self-defense factor. It is mentioned as being a legitimate consideration which the legislature could consider in enacting the death penalty, or which arguably a court might react to, I think, in considering the constitutional issue.

For example, Justice Stewart, in his concurring opinion, said as follows—I am reading from the *Furman v. Georgia* decision, 408 U.S. at page 308. Regarding the factor of retribution, which your mention of the self-defense factor put me in mind of, he said as follows:

On that score I would only say that I cannot agree that retribution is a constitutionally impermissible ingredient in the imposition of punishment. The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they deserve, then there are sown the seeds of anarchy—of self-help, vigilante justice, and lynch law.

This is particularly interesting because it was the vote of Justice Stewart that was one of the needed votes to nullify the death penalty.

Senator McCLELLAN. Do I understand, then, he recognized the right of an individual to inflict death on another human being where necessary to save and protect his own life?

Mr. DIXON. He seems to recognize implicitly that that could happen.

Senator McCLELLAN. And that that is constitutional?

Mr. DIXON. Well, I hesitate to speak for Justice Stewart on an ultimate constitutional point. But he certainly did in the quotation I have given. He certainly did recognize that the spirit of retribution

that is in the nature of man is an important ingredient in supporting the death penalty, and although Justice Stewart voted against the death penalty on the actual facts, and the nature of the statute involved in *Furman*, he did not go so far as to say that he felt the death penalty was unconstitutional per se. Only two justices went that far—Justices Marshall and Brennan.

Senator McCLELLAN. I am thinking about the fundamental principle of society being denied the right to invoke a penalty of death to protect society and to protect thousands, and millions of human beings, so to speak. The infliction of such punishment by the State is unconstitutional, and yet it is constitutional for an individual to inflict death in defense of his own life. It seems to me a little ridiculous.

Mr. DIXON. Under the present state of the law, all that we could say, if it were in a limited sense “constitutional” for one person to take the life of another improperly without losing his own life, because there is no death penalty—then it certainly could be said that anyone so inclined, however immoral his conduct, however heinous his conduct, would have the power to take the life of another person without fear of having his own life similarly taken as a penalty.

Senator McCLELLAN. What occurs to me is that we have in effect said the decision is certainly moving in the direction of saying that society, that our law, cannot impose a death penalty as punishment for taking human life, but that one individual can take the life of another individual and it is constitutional for him to do that. He is absolved from any crime. He can inflict cruel and inhuman punishment, the same cruel and inhuman punishment prohibited to the State, if the interpretation is correct.

Mr. DIXON. Unless we can restore the death penalty, we will have achieved the ultimate social imbalance, that one person can kill another person without fear of suffering the same imposition on himself.

Senator McCLELLAN. Then it seems to me the Court would have to hold that it is unconstitutional for an individual to inflict such cruel and inhuman punishment as death upon another in defense of his own life.

Mr. DIXON. That could occur. Absent a social penalty, a father faced with a killing of a member of his family, having no vent for his feelings, or retribution through the legal system, would say, well, I have had enough, I will myself kill the killer of my daughter, or my wife, or my son. If he did that, he in turn would be immune from capital punishment unless we can by legislation bring that factor back into play. That could lead, then, to a sequence of persons taking the law into their own hands in those situations where they felt that deeply about the situation, and there are few things a person would feel more deeply about than the wanton killing of a member of his family or a close friend.

Senator McCLELLAN. In other words, instead of resolving or preventing a great injustice in society, such a holding, it seems to me, would be creating a tremendous injustice if it is followed to its logical conclusion.

Mr. DIXON. I think that——

Senator McCLELLAN. A man who kills another in defense of himself, his wife, or his children, would be guilty of cruel and inhuman punishment and should be punished. It is ridiculous.

Mr. DIXON. I think you and I have a broad concurrence on this issue. I agree with much of what you are saying.

Senator McCLELLAN. Senator Hruska.

Senator HRUSKA. Mr. Dixon, according to the sentencing hearing under S. 1400, the burden of proof is on the Government regarding the aggravating factors, and the Government is bound by ordinary rules of evidence regarding admissability. Why?

Mr. DIXON. That, Senator Hruska, was a policy decision which we do not feel was compelled by law, but it was a policy decision in providing the maximum protection for the accused regarding the proof of the element that is the aggravating factor, which would open up the death penalty. We chose to put that in for policy reasons, really as an added protection to the defendant. He can not receive a death penalty under S. 1400 unless at least one aggravating circumstance be shown, and we saw fit to cloak the proof of that one aggravating circumstance as the precondition to imposing the death penalty with this protection. We do not feel it to be compelled by law. It is a policy decision.

Senator HRUSKA. Under S. 1400, as well as under S. 1, suppose the jury does not bring in the death penalty verdict; what happens then?

Mr. DIXON. Well, in that event, if the jury does not bring in the death penalty verdict under the administration bill, S. 1400, the judge would have open to him at his discretion the full panoply of alternative sentencing provisions elsewhere in the code. By contrast, if a jury did not bring in a guilty conclusion—excuse me—a death penalty conclusion under S. 1, then as I understand S. 1, life imprisonment would be automatic. Under S. 1, if the jury does not find death penalty, then the judge automatically imposes life imprisonment. Under S. 1400, the judge would have broader discretion.

Senator HRUSKA. That discretion is at the hands of the judge himself?

Mr. DIXON. At the hands of the judge, correct.

Senator HRUSKA. Must the jury's verdict as supporting a death penalty under S. 1400 be unanimous?

Mr. DIXON. It is not so specified in S. 1400; however, S. 1400 would be read in the light of the general practice prevailing in Federal courts, which is unanimous verdicts. So at the present time, it would be unanimous. Should general Federal law change, then S. 1400 would change automatically.

S. 1 by contrast, does specify that the verdict must be unanimous in order to open up the death penalty.

Senator HRUSKA. Mr. Chairman. I have some further questions here, but I believe that we could submit them for the record and ask Professor Dixon to submit written replies. They are technical in nature, and it would be just as well subserved in that fashion.

Senator McCLELLAN. Very well. They will be submitted and we will appreciate your answers to them.

I would like to ask you one other question. We hear it said that the death penalty does not deter the commission of the crime of murder. In your judgment, does any criminal statute and the penalty it imposes for specified crimes deter?

Mr. DIXON. Yes, I believe there is an important deterrence factor in the entire criminal code, and indeed it might be hypothesized, even though proof in these areas is disputed, it might be hypothesized that there is a greater deterrence value in the extreme penalties we associate with major felonies than the deterrence factor at the level of misdemeanors and more petty offenses. I believe that some of the evidence questioning the deterrence element in criminal law is evidence going more to the lower range of felonies and misdemeanors.

Having said that, I would also like to add this further point. Even though there may be disputes about the degree of deterrence that flows from any particular offense category and the penalty attached thereto, there is no generally accepted proof that I know of that criminal law has no deterrence. I know of no proof for the proposition that criminal law and the criminal system have no deterrent effect on antisocial behavior. So I think we should maintain our criminal system and try to improve it, and not throw up our hands.

Senator McCLELLAN. My thought is this: If criminal laws and the penalties prescribed for given crimes, do not deter, why have them?

Mr. DIXON. If we can accept the proposition that criminal law does not have a deterrent effect, then I would suppose the conclusion would follow. But I would not accept the premise and the Department of Justice does not accept the premise that criminal law and the penalties associated therewith lack a deterrent effect. We think they have a deterrent effect.

Senator McCLELLAN. Well, I do too. But the argument is made that the death penalty does not deter. I think the penalty for armed robbery is about 20 years, isn't it? Is that the highest penalty for armed robbery?

Mr. DIXON. I believe that is approximately it.

Senator McCLELLAN. Do you think that deters some people from committing armed robbery? It does not deter all but do you think it does deter some?

Mr. DIXON. Yes, I do. Certainly we can say this much: The death penalty totally incapacitates the defendant from repeating any other offense. And you can say that a term of imprisonment totally incapacitates the prisoner from committing any further offense, as a deterrence in that sense, during the term of imprisonment. Also, I was much taken by the illustrations you gave me, Mr. Chairman, in your opening statement, regarding the New York Bank case, and regarding the Maryland restaurant case. In each instance the perpetrators of the crime in those situations were openly gloating over the fact that whatever they did to their hostages in the bank and in the Maryland establishment . . . they were openly gloating that whatever they did, they could not suffer the death penalty. I think to put that kind of an emotional spirit into the hands of a person who is already imbalanced and keyed up—in the course of committing a major offense like this that may last for several hours—is very, very bad social policy.

Senator McCLELLAN. Yes, sir.

If a 20-year penalty for robbery would deter some people from committing robbery, I believe the death penalty would also deter some people from coldblooded murder, if they thought the penalty was going to be enforced.

Mr. DIXON. I agree.

Senator McCLELLAN. After all, it is the enforcement, the knowledge, the belief, the realization that the penalty may be imposed and executed. That is the real deterrent.

Mr. DIXON. I agree.

Senator McCLELLAN. The law moralizes what is right and wrong and imposes a penalty. A man may care nothing about the morals involved, the moral issue, but when you talk about taking his own life, if that doesn't make him think and use some judgment and act with discretion—there is no way, then, to deter crime.

Mr. DIXON. If that makes one person think, and that one person is deterred, we will have accomplished something important. But I think many, many persons are deterred, not just one person, by the prospect of penalties.

Senator McCLELLAN. I think many people are deterred by reason of the death penalty. If you go ask somebody that has been sentenced to the death penalty if it deterred him, he would probably say no, it didn't. Well, it didn't. But if you ask him if he had been conscious of the fact at the time he committed the crime that the death penalty was certain to be imposed, that he would lose his own life, I believe then he would tell you that it would have deterred him.

Mr. DIXON. I take further comfort from the fact—I think we can all take comfort from the fact—that the Supreme Court has not yet wholly invalidated the death penalty on constitutional grounds.

Senator McCLELLAN. Well, I hope it never does.

Mr. DIXON. We hope that these measure may restore an effective death penalty, at least in the Federal sphere.

Senator McCLELLAN. Thank you very much.

[Committee insert.]

THE SUPREME COURT DECISION ON THE DEATH PENALTY

A Summary of the Opinions of the Individual Justices in Furman v. Georgia

In three cases that will collectively go on the books as *Furman v. Georgia*, the United States Supreme Court on June 29, 1972, declared that under certain circumstances the imposition of the death penalty violates the Eighth and Fourteenth Amendments of the United States Constitution. In two of the cases the defendants were sentenced for rape; in the other case the sentence was for murder. Below is a summary of the nine separate opinions produced by this decision.

I. MAJORITY OPINIONS

Justices Marshall and Brennan felt that the imposition of the death penalty was unconstitutional under all circumstances.

A. Justice Marshall

Justice Marshall dwelt a great deal on the historical aspects of the question. He felt the legislative history of the Eighth Amendment showed that the provision was intended to prohibit cruel punishments. He went on to describe how the provision had been interpreted in the courts (emphasizing *Weems v. United States*, 217 U.S. 349 (1910), in which the Court "invalidated a penalty prescribed by a legislature for a particular offense") and deduced certain prin-

ciples from these decisions. Citing *Trop v. Dulles*, 356 U.S. 86 (1958), he stated that the "most important principle" was that the Court, in assessing the constitutionality of a punishment, "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

Marshall discussed the faltering progress of the legislative movement to abolish the death penalty in America. He then asserted that the Eighth and Fourteenth Amendments dictated abolition of the death penalty for two separate reasons.

First, Marshall found that the death penalty accomplished no legitimate legislative purpose that could not be accomplished equally well by a lesser penalty. Justice Marshall listed six purposes "conceivably served" by the imposition of the death penalty: retribution, deterrence, prevention of repetitive criminal acts, encouragement of guilty pleas and confessions, eugenics, and economy. He found that some of these purposes (e.g., retribution) failed to justify the existence of any punishment and that the legitimate purposes of the death penalty (e.g., deterrence) were served equally well by less severe punishments.

Second, Marshall felt that abolition of the death penalty was alternately justified by the fact that it was "morally unacceptable to the people of the United States at this time in their history." He argued that the test of whether the penalty was morally unacceptable was whether American citizens would find it so "in the light of all information presently available." He stated that the average citizen would find capital punishment "shocking to his conscience" were he aware of the following facts: first, as mentioned earlier, that the death penalty accomplished no legitimate legislative purpose; second, that the penalty was imposed discriminately against "certain identifiable classes" such as racial minorities and the poor.

B. Justice Brennan

Justice Brennan felt that the legislative and judicial history of the clause demonstrated that "the Framers concern was directed specifically to the exercise of the legislative power." He asserted that in previous decisions the Court not only adopted this view but also took the position that the clause was not limited to penalties which the Framers intended to proscribe.

Brennan, like Marshall, stated that the constitutionality of the death penalty must be assessed in terms of society's evolving standards. However, he felt that the test of whether a punishment was "cruel and unusual" was whether or not it comported with human dignity.

Brennan argued that the issue of whether a punishment comported with human dignity turned on four questions: whether it was inflicted in an arbitrary manner; whether it was unacceptable to contemporary society; and whether it accomplished any legitimate purpose that was not accomplished equally well by a less severe punishment. He said that a review of past judicial interpretations of the Eighth Amendment demonstrated that no punishment adjudged cruel and unusual was fatally offensive under a single principle; indeed, it was unlikely that any legislature would enact such a statute. He felt, however, that the four principles were interrelated and that if a punishment "seriously implicated" several of the principles, the Court would be justified in concluding that the punishment failed to comport with human dignity.

Brennan felt that the death penalty in view of its "enormity and finality" was so severe as to be degrading to human dignity. He argued that the infrequent infliction of the death penalty gave rise to a strong presumption of arbitrariness. Our system of giving judges and juries discretion as to the imposition of the penalty failed to guard against the likelihood that the penalty was being inflicted arbitrarily. Brennan felt that the growing debate on the death penalty, the decrease of crimes for which the penalty was inflicted, and the current rarity of infliction for any crime, indicated that the penalty had been virtually rejected by society. He also argued that capital punishment accomplished no legislative purpose that could not be equally well accomplished by some less severe penalty. He felt that the retributive value of the penalty was undemonstrated, and that the manner in which the penalty was "currently administered" kept it from being a superior deterrent.

Since the death penalty was inconsistent to some degree with all four principles, Brennan concluded that it failed to comport with human dignity and thus violated the Eighth and Fourteenth Amendments.

C. Justice Douglas

Justices Douglas, Stewart and White did not find the death penalty to be unconstitutional in all instances, rather, they focused upon the discretion granted judge and jury under current death penalty statutes.

Justice Douglas asserted that the Fourteenth Amendment prohibited "cruel and unusual" punishments prohibited in the Eighth Amendment regardless of whether that prohibition was carried out under the privileges and immunities clause or the due process clause.

Like Marshall and Brennan, Douglas felt that the validity of the death penalty should be assessed in terms of the evolving standards of society. He felt that the legislative history of the Eighth Amendment indicated an intent on the behalf of the framers to prohibit the selective and discriminatory imposition of any penalty.

Douglas recognized the argument, put forth by Ernest van den Haag, that if a penalty was being inflicted unequally, the process by which the penalty was inflicted should be altered rather than the penalty itself. However, Douglas seemed to feel that the Court's previous decision of *McGautha v. California*, 402 U.S. 183 (1971), in which the Court allowed the jury "practically untrammelled discretion" in its imposition of the death penalty precluded such an approach. The Court in *McGautha* had noted that juries in the past, when confronted by statutes requiring mandatory death sentences, had exercised a sort of *de facto* discretion by acquitting defendants they did not wish to execute.

Douglas surveyed evidence that the death penalty had been inflicted in a discriminatory manner and noted that all the defendants in the instant cases were black. He did not feel ready to assert that discrimination had played a part in the imposition of any of the sentences. Rather, he emphasized that the system provided no standards to govern the imposition of the death penalty, leaving the fate of the defendants committing such offenses to the "uncontrolled discretion of judges or juries."

He felt that a function of the cruel and unusual punishment clause was to insure the even-handed application of all penalties and that equal protection was "implicit in the ban on 'cruel and unusual' punishments."

In striking down the discretionary death penalty statutes, Douglas noted that a statutory scheme employing the death penalty might be constitutional on its face, but unconstitutional in its use. He cited the example of a mandatory death penalty, only imposed upon minorities or members of the lower classes. He concluded with the statement that he did not reach the question whether or not a mandatory death sentence would be otherwise constitutional.

D. Justice Stewart

Justice Stewart emphasized the finality of the death penalty and expressed sympathy with arguments advocating prohibition of the death penalty in all circumstances. However, he found it "unnecessary to reach the ultimate question they would decide."

Stewart cited various examples of mandatory death sentences and stated that review of death sentences under such penalties would require the court to decide whether capital punishment was unconstitutional under all circumstances. More precisely, the question would be whether "a legislature could constitutionally determine that certain criminal conduct" was "so atrocious that society's interest in deterrence and retribution" outweighed "any considerations of reform or rehabilitation of the perpetrator. . . ."

On this question Stewart felt that "empirical evidence" that an "automatic death penalty" would provide "maximum deterrence" was "inconclusive." However, he did not feel that retribution was a "constitutionally impermissible ingredient in the imposition of punishment." He noted that retribution was instinctive in man and that the channelling of that instinct in the administration of criminal justice helped to prevent certain destructive manifestations of "self-help."

In the case at hand Stewart observed that none of the death sentences imposed were mandatory. The legislature, in other words, had not determined that the imposition of the death penalty was necessary to deter the respective crimes committed. The imposition of the death sentence was "cruel" because it went beyond what the state legislatures determined to be necessary; it was "unusual" because the imposition of the death sentence for either of the crimes involved was infrequent. Justice Stewart further stated that the

defendants were among a "capriciously selected random handful" upon whom the sentence of death had been imposed. There were many others who, though convicted of the same crimes and "just as reprehensible" as the defendants, were, nevertheless, not sentenced to death. He concluded that the Eighth and Fourteenth Amendments cannot tolerate infliction of the death penalty under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed."

E. Justice White

Justice White emphasized that he was not taking the position that the imposition of the death penalty was unconstitutional in all circumstances; however, he felt that that position had been "ably argued." White addressed himself to the constitutionality of a statute which left the ultimate imposition of the sentence to judge and jury.

He noted that in the instant cases the legislature had authorized the imposition of the death penalty for murder or rape without mandating it, and that the penalty had been imposed so infrequently that the odds were now "very much against imposition and execution of the penalty with respect to any convicted murderer or rapist."

White reasoned that under these statutes the legislative will is not frustrated if the death penalty is never imposed. He also asserted that the death penalty was so infrequently imposed under the statutes before the Court that the punishment failed to satisfy any general need for retribution and, more important, ceased to function as a credible deterrent. He thus concluded that the penalty was "patently excessive." He also noted that there was "no meaningful basis for distinguishing the few cases" in which it was imposed from "the many cases" in which it was not.

White stated that "for present purposes" he accepted the "morality and utility" of punishing one person to influence another. At one point he stated that he did not feel the need to reject the death penalty "as a more effective deterrent than a lesser penalty." Later, however, he stated that it was "difficult to prove . . . that capital punishment, however administered, more effectively serves the ends of criminal law than does imprisonment."

He felt that the Eighth Amendment obligated the judiciary to review certain penalties whether legislatively approved or not. In the present case, the claims for legislative judgment were particularly inappropriate because the legislature had delegated the ultimate imposition of the death penalty to judges and juries which, in their own discretion and without violating their trust or any statutory policy, could refuse to impose the death penalty no matter what the circumstances of the crime.

II. DISSENTING OPINIONS

Justices Burger and Blackmun, while expressing personal disapproval of the death penalty, did not feel that it was appropriate for the judiciary to overrule the legislature in the present cases.

A. Chief Justice Burger

Chief Justice Burger repudiated the argument that capital punishment had always been "cruel" and that it was "unusual" as well because of infrequent use. He stated that both the legislative history and subsequent judicial interpretation of the Eighth Amendment indicated that the provision was directed at inhuman punishment "regardless of how frequently or infrequently imposed." He felt that the adjective "unusual," whatever its function, was certainly not directed at a longstanding punishment such as the death penalty.

Surveying judicial interpretation of the Eighth Amendment, Burger noted that the Court had never held a punishment to be impermissibly cruel because of a shift in social values. More important, he observed, the Court had never held "that a mode of punishment authorized by a domestic legislature was so cruel as to be fundamentally at odds with our basic notions of decency."

The Chief Justice felt that in a democracy the presumption that the legislature embodied the prevailing standards of decency could be disproven only by showing a nationwide repudiation of the death penalty. He then cited the nationwide legislative endorsement of the penalty and noted that polls on the question fell far short of showing universal condemnation.

Burger admitted that juries imposed the death sentence infrequently. How-

ever, he felt that to characterize such imposition as "freakishly" rare was "unwarranted hyperbole." He further said that the conclusion that juries imposing the death penalty were acting arbitrarily ran against the Court's past endorsement of jury responsibility and had no empirical basis. Later in the opinion he asserted that the jury's infrequent imposition of the death penalty demonstrated that body's serious attitude towards its responsibility.

Burger felt that the argument that the death penalty accomplished no legitimate purpose was invalid; just as the approval of a punishment involving extreme cruelty could not be justified on the basis of its efficacy, the disapproval of a particular punishment could not properly be predicated on its inefficacy. In any event, the Chief Justice disagreed with the majority's repudiation of retribution as a legitimate end of punishment, and noted that the question of the deterrent value of capital punishment was "beyond the pale of judicial inquiry."

Burger asserted that the majority erred in depriving judges and juries of discretion to impose the death penalty. The actual scope of the Court's ruling, which he presumed to be embodied in the "pivotal" opinions of Justices Stewart and White, would demand a rigid system of sentencing in capital cases which "if possible of achievement, cannot be regarded as a welcome change." The Chief Justice argued that the Eighth Amendment was directed towards punishments, not sentencing processes, and that the issue had been foreclosed, at any rate, by the Court's earlier decision of *McGautha v. California*, *supra*. He further asserted that legislatures would have a difficult time establishing guidelines for judges and juries in imposing of the death penalty. Such attempts had not been successful in the past, and, even if guidelines could be established, juries might well retain *de facto* discretion by returning verdicts to lesser offenses in certain cases. If the only constitutional statutory scheme remaining is one in which judges and juries are faced with a choice between imposition of the death sentence and acquittal, Burger would have preferred that the penalty be abolished altogether.

Burger, nevertheless, was somewhat pleased that the Court's decision gave the legislatures "the opportunity, and indeed the unavoidable responsibility," to re-evaluate the question of capital punishment. He felt the legislatures are far better forums than the courts for evaluation of such an issue, since the basic questions are factual rather than legal. Though the Court went "beyond the limits of judicial power," it "fortunately" left "some room for legislative judgment."

B. Justice Blackmun

Justice Blackmun felt that the death penalty should not be overturned judicially although he would vote against its retention were he a legislator. He noted that past decisions of the Court had implicitly recognized the constitutional validity of the penalty. Blackmun also observed that in recently enacted federal statutes the death penalty had been included by the "elected representatives of the people [who are] far more conscious of the temper of the times, of the maturing of society, and of the contemporary demands for man's dignity, than are we who sit cloistered on this Court."

Blackmun felt that legislatures would re-enact statutes with mandatory death penalties. Such legislation, bereft of mercy, would be "regressive" in his opinion.

C. Justice Powell

Justice Powell generally endorsed Justice Burger's comments on the qualified nature of the majority repudiation of the death penalty. Powell's opinion was directed at the majority opinions advocating abolition of the death penalty in all circumstances.

Powell felt that the legislative history of the Eighth Amendment demonstrated that it was not the intent of the framers to prohibit the death penalty. Powell admitted that the Court was not barred from examining the imposition of the death penalty on a case-by-case basis, but felt it highly inappropriate to seek "total abolition of capital punishment by judicial fiat."

He noted that the Court had tacitly approved the existence of the death penalty in a long line of decisions. While acknowledging that notions of cruel and unusual punishment do evolve, Powell felt that this fact only justified a case-by-case examination of the death penalty. To abolish the death penalty

altogether was to assert that "the evolutionary process" had come "suddenly to an end."

Powell argued that judicial restraint was especially required in deciding the instant cases. The issues presented a temptation to read personal opinions into the Constitution. Furthermore, the Court decision would affect numerous federal and state statutes.

He felt that legislative action, state referenda, and jury action throughout the country refuted the argument that contemporary society rejected the death penalty. Furthermore, the argument that contemporary society only tolerated the death penalty because of its infrequent and discriminatory imposition was speculative. The fact that the death penalty fell more frequently on the impoverished was not due to an evil inherent in the penalty, but rather to long-standing social and economic problems. Powell felt that Justice Harlan's opinion in *McGautha v. California*, *supra*, had disposed of the majority's assertion that the death penalty should be abolished where arbitrarily and/or discriminatorily applied. Powell felt that there were other ways to attack discriminatory imposition of the death penalty and that, at any rate, the problem was no longer one of great magnitude.

Powell then rejected the argument that the death penalty, because it served no rational legislative purpose, was unconstitutional. He noted that there was no justification in the legislative or judicial history of the Eighth Amendment for the proposition that the Court could strike down a statutory punishment because it found the same purposes served by a lesser penalty, that decisions in this area lie within the special competence of the legislatures and hence are entitled to a presumption of validity, and that it was at least arguable that retribution was a legitimate aim of deterrence.

Powell asserted that the Court should not strike down a punishment unless the punishment was "greatly" or "grossly" disproportionate to the crime. He asserted that the death penalty was not a disproportionate punishment for the crime of rape, particularly when the effects of that crime on the victim were considered.

Powell felt that in foreclosing future discussions—legislative or judicial—of the death penalty, the Court was overreaching itself. A case-by-case approach, though tedious, would have been far more desirable.

D. Justice Rehnquist

Justice Rehnquist argued that the Court was overreaching itself in striking down legislatively enacted death penalties. Advocating judicial restraint, he asserted that overreaching by the judiciary interfered with the "right of the people to govern themselves." He felt it particularly important that the judiciary restrain itself, because there was no truly effective outside restraint on that body. He observed that it was better for the judiciary to err on the side of restraint since the result, at worst, was to leave standing a duly enacted law.

[The following letter was subsequently received].

DEPARTMENT OF JUSTICE,
Washington, D.C., August 17, 1973.

MR. G. ROBERT BLAKEY,
Chief Counsel, Subcommittee on Criminal Laws and Procedures,
Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. BLAKEY: This is in response to the questions you posed to me in your letter of April 17, 1973 in conjunction with the hearings held by the Subcommittee on Criminal Laws and Procedures on the death penalty provisions of S. 1400.

Following are the questions which you posed and the answers of the Department of Justice to those questions:

1. What value as a precedent does a per curiam opinion such as *Furman* have when it does not articulate its rationale?

The status of a decision as a precedent depends upon several factors, including the force and clarity of its rationale, whether the Court was unanimous or divided, and whether it has stood the test of time. Judged by these standards the recent 5-4 per curiam decision in *Furman v. Georgia*, where each majority Justice wrote a separate opinion, is certainly not of the same precedential weight as cases like *Marbury v. Madison* or *Gideon v. Wainwright*. On the other hand, the

Furman precedent on its exact facts is, of course, binding on all American courts, like any other Supreme Court decision, unless and until it is overruled.

2. To what degree is the Congress bound to follow the views of Justices set out in concurring opinions?

The Court in *Furman* held that "the imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." Because of that holding, the Congress should not enact legislation like that which was the subject of the case. Since there is no majority among the concurring opinions of the Justices as to the rationale supporting the holding, it is necessary to analyze the individual concurring (and dissenting) opinions to attempt to draft a statute which could withstand Supreme Court scrutiny. The Congress is not bound by any single opinion but can only use the opinions as guidelines in drafting constitutionally acceptable legislation.

3. Are Justices themselves bound by their own concurring opinions?

Although the Justices are not "bound" by their concurring opinions, it is likely that each Justice will adhere, in the main, to the view he already has expressed. These opinions present the best available indication of the treatment death penalty legislation would receive from the Supreme Court as it is presently constituted.

4. Chief Justice Burger comments in dissent [408 U.S. at 401] that either mandatory penalties or setting standards for the exercise of discretion would meet the concurring opinions of Mr. Justice White and Mr. Justice Stewart, who objected to the "wanton and freakish" application of the death penalty under present practice. Do you agree that either or some combination of both of these methods might pass constitutional muster?

We believe that carefully drawn legislation combining the best elements of the standards approach and the mandatory approach stands the best chance of passing constitutional muster.

Although the *Furman* decision can be read to permit the use of strict mandatory death penalties applied to every person who commits a certain crime, it is uncertain whether such a provision would survive constitutional attack, both because it might be concluded by a court to be cruel and unusual punishment in a case where mitigating circumstances were present, and because juries would probably be inclined to acquit in many cases if that were the only alternative to the death penalty, thus leading to the problem discussed in *Furman* of uneven application of the death penalty.

On the other hand, a system setting out standards for the discretionary imposition of the death penalty such as the system provided in S. 1 for weighing aggravating and mitigating circumstances, might pass constitutional muster if it could be drawn in a manner which would not result in unfair and uneven application.

We believe, however, that combining the standards approach and the mandatory approach in a single bill is the preferable method. There is some flexibility in the aggravating and mitigating factors to be considered by the jury under S. 1400, but once the jury has determined the presence or absence of those factors, the death sentence is either clearly required or clearly precluded. This approach should lead to even application of the death sentence while precluding its application to cases where it is inappropriate.

5. Assuming Congress were to enact mandatory penalties, how do you think the Court would treat the prosecutor's discretion not to bring a charge, the power of court or jury not to convict and the power of the President to pardon? Are not all penalties really discretionary?

To begin with, I question whether these aspects of the criminal justice system are within judicial cognizance in determining the validity of a sentencing system. It has been held, for example, that the power of a prosecutor not to bring a charge is committed to his discretion under the doctrine of separation of powers. *United States v. Cox*, 342 F. 2d 167 (C.A. 5), *cert. denied*, 381 U.S. 935 (1965). Surely the same concept would apply to the President's exercise of the pardoning power.

Apart from that consideration, however, so long as the various types of discretion listed are exercised in a fair and even-handed manner, we do not believe that the Court would object to their exercise in conjunction with the death penalty provisions of S. 1400. The aggravating and mitigating factors set forth in S. 1400 provide sufficient restrictions upon the imposition of the penalty that,

as compared to the situation that would exist under a simple mandatory penalty provision, there would seldom be pressure to resort to such discretionary possibilities. In any event, all penalty structures necessarily contain some discretionary elements because of the danger of occasional unfairness without the availability of any discretion.

6. However they would work in practice, if we call them "mandatory" penalties, how can law enforcement officials respond to a prison riot or airplane hijacking situation, where one person has been killed and other hostages are still held? How can you talk a gunman into giving himself up and releasing hostages when the death penalty is supposedly mandatory? What incentive would he have not to kill other people? Would it be feasible to make a mitigating factor that he did return hostages or others?

It must be kept in mind that the death penalty provisions of S. 1400 are "mandatory" only if one or more aggravating circumstances are found to exist and if none of the mitigating circumstances are found to exist. At the time of an offense, the non-existence of mental impairment or duress can never be so certain as to warrant the assumption that the death penalty will necessarily follow convictions for the offense.

The idea of having as a mitigating circumstance the freeing of hostages unharmed seems desirable on its face, but could cause more problems than it would solve. It might, for example, encourage the taking of hostages, since the person taking the hostages would know that so long as he complied with a request to free at least one hostage, he could kill other hostages without being made subject to the death penalty. We would, of course, have no objection to providing a mitigating circumstance such as you suggest if it did not have the drawbacks pointed out. (It should be noted that under the balancing-test approach employed by S. 1, even if it included such a mitigating factor, there might be less bargaining power available to the government in the situations postulated since at the post-trial hearing the jury could find that mitigating factor satisfied yet still elect to impose the death penalty.)

7. Why does S. 1400 [§ 2401(b)] provide for life imprisonment if only one mitigating factor is present? Should it not be a balancing process?

The Department's bill contains a narrowly drawn list of mitigating factors, any one of which we believe should absolutely preclude the application of the death sentence. For example, we do not believe that a person whose mental ability was significantly impaired should be subject to the death sentence, regardless of the seriousness of his offense. The application of the balancing test could lead to inappropriate application of a death sentence to such a person because of such factors as the nature of the evidence in a heinous murder case, a result which we believe the legislation should preclude. It should be noted, moreover, that S. 1400 does not provide for automatic life imprisonment if the death sentence is not imposed in such instances; rather, it provides that the defendant will be subject to any other sentence authorized for the offense for which he was convicted.

8. In *Williams v. New York*, 337 U.S. 241, 247 (1949), in affirming as consistent with Due Process a death sentence imposed by a judge on the basis of hearsay information after a jury recommendation of life imprisonment, the Supreme Court observed: "Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." S. 1400, § 2402(b), however, would restrict the evidence presented by the government in the penalty phase to that tested by the rules of evidence. Why should the interest of society in the imposition of capital punishment not have access to the fullest information possible?

S. 1400 provides for the application of stringent rules of evidence in the sentencing hearing for the death sentence only for determination of the existence of aggravating circumstances. The Department of Justice concluded that as a policy matter the death penalty should be available on in very limited situations and that it was appropriate to make the government's proof subject to the highest evidentiary standards. The defendant would be free to introduce evidence to establish the existence of mitigating factors without regard to its admissibility under the rules of evidence in criminal trials. Admittedly, this approach tips the scales in favor of the defendant, and may promote some inequality.

9. S. 1 makes the death penalty applicable to murder and treason, while S. 1400 would extend the list to sabotage and espionage. What justification can be offered for going beyond murder and treason?

The general rationale for making the death penalty applicable also to certain forms of espionage and sabotage is that, under the limited circumstances speci-

fied in the definitions of those offenses and in section 2401(a)(1), those offenses have the potential of directly or indirectly causing the death of numerous American citizens. When committed under such described circumstances, these offenses would warrant imposition of the death penalty fully as much as the offenses of treason and murder. Indeed, under such circumstances, these offenses would often constitute an aggravated form of treason.

Today, with the possibility of a decisive nuclear conflict lasting only a matter of hours, it is conceivable that a single act of sabotage could predetermine the outcome of such a conflict. Section 1111(b)(1) of S. 1400 would make sabotage a potentially capital offense only if committed in time of war and only if the offense causes major damage to or impairment of a major weapons systems or a means of defense, warning, or retaliation against large-scale attack.

10. What individual justification underwrites your inclusion in S. 1400 of each aggravating and mitigating factor? Please indicate in your response why the various factors in S. 1, but not in S. 1400, were omitted. In particular please comment on § 1-4E1(b)(vii) (absence of significant history of prior criminal activity).

The Department of Justice believes that under certain circumstances the death sentence is inappropriate regardless of the other circumstances surrounding the crime.

We do not believe, for example, that a person who committed a crime otherwise punishable by death should be subject to the death sentence if he was under the age of eighteen at the time the offense was committed. Although a juvenile should be held accountable for his acts, the death sentence, we believe, is too stringent for a person whose immaturity may have contributed to the commission of the offense.

Further, we do not believe that a person who acted under a significantly impaired mental state, although not of such a severe degree as would absolve him of criminal responsibility, should be subject to the same level of punishment as a person who committed a similar act under other circumstances. Similar considerations apply to a person who acted under unusual and substantial duress.

The fourth precluding circumstance provided in S. 1400 would preclude application of the death penalty if the defendant was an accomplice in a crime committed by another but his participation was relatively minor. Not all persons legally chargeable as principals in an offense necessarily warrant the same penalty. For example, a person who participated in a kidnaping by permitting his dwelling to be used as a temporary place for confining the victim, and who did nothing else to warrant his participation being considered anything other than minor, should not as a matter of policy be subject to the same penalty as the primary perpetrator who actually kidnaped and ultimately killed the victim.

Finally, the fifth precluding circumstance, that the defendant could not foresee that his conduct would cause, or create a grave risk of causing, death to another person, is included primarily to preclude use of the death sentence for a nonviolent crime which accidentally causes the death of another in a situation where this risk is not foreseeable. This mitigating circumstance might in certain situations overlap the fourth precluding circumstance.

Under the Department's proposal, at least one aggravating circumstance must be present in order for the death sentence to apply. For the crimes of treason, sabotage, and espionage the crime must not only be committed under the special circumstances set forth for Class A felony treatment in the grading subsection of the offense but must also either be the defendant's second offense of that nature or have created a grave risk of substantial danger to the national security or a grave risk of death to another person. Thus, the proposal would narrowly limit the death sentence for national security offenses to the most serious possible offenses, those involving grave risk to the national security or of death to another person, or those which are part of a pattern of commission of the most serious types of national security offenses.

The aggravating circumstances provided in the Department's proposal for the offense of murder were formulated to cover those murders which were especially heinous in character, posed an undue danger to other persons, were committed by a hired killer, were part of a pattern of dangerous felonious behavior, or substantially threatened governmental functions or foreign relations of the United States because of the position of the victim of the offense.

The aggravating and mitigating circumstances listed in section 1-4E1 of S. 1 are in some instances more loosely drawn than those in S. 1400. This is a result

of the fact that S. 1 provides for a balancing of the factors considered rather than providing a mandatory result if certain findings are made. Thus, S. 1400 necessarily avoids listing certain aggravating and mitigating circumstances listed in S. 1 because the result of listing them might be to require the death sentence when it should not be required or to preclude it when it should be imposed. For example, S. 1 provides as a mitigating circumstance that the defendant is "emotionally immature". Although this might be an appropriate consideration when a balancing test is used, it should not in itself preclude applicability of the death sentence as it would if incorporated in the S. 1400 approach. For the same reason, where certain mitigating circumstances are included in both S. 1 and S. 1400, the language of the provisions of S. 1 is sometimes broader than the language of the comparable provisions in S. 1400. For example, the third mitigating circumstance listed in S. 1 is the impairment of the defendant's capacity to appreciate the character of his conduct or to control his conduct; by contrast S. 1400 would require that the defendant's mental capacity be "significantly" impaired. The broader provision of S. 1 again may be appropriate to a balancing test, but when the existence of a given circumstance would completely preclude application of the death sentence, the language should be more narrowly drawn.

With respect to the seventh mitigating circumstance provided by S. 1, that "the offender has no significant history of prior criminal activity", this may be an appropriate consideration when a balancing test is used. However, we believe that it should not preclude application of the death sentence in certain cases altogether, as would occur if it were made a precluding circumstance under S. 1400. It should be noted however, that the aggravating circumstances listed in S. 1400 are drawn to require consideration of past criminal records in certain situations. (See section 2401(a) (1) (A), (2) (B), and (2) (C)).

11. S. 1400, § 2402(a), provides for the penalty hearing to be held unless the government stipulates that aggravating factors are absent or mitigating factors are present. No time (*e.g.*, when the indictment is returned) is set for the stipulation. No factual basis is required for it. And it is not subject to judicial review. In the absence of such safeguards, do you see the potentiality for abuse of the stipulations as a plea bargain technique in capital cases?

In many Class A felony cases the nonexistence of an aggravating circumstance or the existence of a mitigating circumstance will be so obvious that it would serve no purpose to go through the special sentencing hearing provided for in S. 1400. In such cases, a provision should exist to permit appropriate stipulations. Since such stipulations will entail fairly specific matters of fact, a lawyer, as an officer of the court, is unlikely to file a stipulation containing a false representation—an act that would be a felony both under S. 1400 (section 1343) and under existing law. In any event, the courts may be expected to scrutinize the application of the death penalty very carefully for any abuse, and prosecutors may be expected to recognize the necessity for evenhanded application of the death sentence in order for any death sentence provision to be found constitutionally acceptable.

12. Do you think it might be advisable to permit an appellate court to review the substantiality of the evidence and the applicability of the aggravating factors in capital cases? Would there not be a tendency for an appellate [court to] review the conviction for technical points anyway if it thought the death penalty was improperly imposed?

The conviction of the defendant in such a case would be subject to appeal in the same manner as any other criminal case. If the defendant believed that there was an unsupported finding of an aggravating circumstance resulting in the imposition of the death sentence, the finding would be subject to appellate review. We see no need for a specific provision permitting or requiring appellate court review in these cases.

13. Do you think it would be a good idea to process S. 1401 along with S. 1 and make the provisions of S. 1401 effective immediately, even though S. 1 would have a delayed effective date?

We recommend that S. 1401 be enacted at an early date and go into effect as soon as possible. The provisions of S. 1401 were specifically drawn to amend existing law rather than the proposed criminal code so that the bill could be acted upon before passage of the entire code. The provisions relating to the death sentence can then be incorporated into the criminal code as it passes the Senate.

Sincerely,

ROBERT G. DIXON,
Assistant Attorney General, Office of Legal Counsel.

Senator McCLELLAN. Our next witness is District Attorney Arlen Specter.

Mr. Specter, we welcome you today. You have been before this committee before. I believe you were one of our important witnesses when we considered the Omnibus Crime Control Act, were you not?

**STATEMENT OF ARLEN SPECTER, DISTRICT ATTORNEY,
PHILADELPHIA, PA.**

Mr. SPECTER. Yes, sir, Senator McClellan. I had the pleasure to be in July of 1966, shortly after the *Miranda*¹ decision came down, in terms of this committee's consideration of the Omnibus Crime Control Act, which was passed in 1968.

Senator McCLELLAN. We appreciate your appearance and are grateful to you for coming back today to testify on the issues and problems the committee is now considering.

You have a prepared statement, I believe?

Mr. SPECTER. Yes, I do, Senator McClellan.

Senator McCLELLAN. You may proceed.

Mr. SPECTER. If it pleases the committee, I would prefer to submit the prepared statement and perhaps highlight it and supplement it on other points which I think may be of interest to the committee.

Senator McCLELLAN. Very well. The statement will be received and printed in full in the record at this point. You may proceed to highlight it.

[The statement referred to follows:]

STATEMENT OF DISTRICT ATTORNEY ARLEN SPECTER

Today I would like to discuss with the members of this Subcommittee the most serious and complex problem which confronts me as a law enforcement officer. It is a problem which has stirred controversy in every State in this nation. It is a problem so difficult, and so fundamentally tied to a disconcerting interweaving of religious, moral, social and legal principles, that it has provoked virtually every citizen to take his stand—either for or against.

The problem to which I refer is the question of the reinstitution of the death penalty.

When the United States Supreme Court struck down capital punishment as unconstitutional, if freakishly or wantonly applied, in the now famous case of *Furman v. Georgia*, 408 U.S. 238 (June 29, 1972), the decision brought audible sighs of relief in some quarters and frustration underscored by a very real sense of naked helplessness in others.

Because more than a decade in the District Attorney's Office of the nation's fourth largest city has convinced me that the death penalty is a meaningful deterrent to violent crime, my Office moved immediately to propose legislation which meets the requirements articulated by the U.S. Supreme Court in the *Furman* case. By July 5th, less than one week after the Court had acted, our proposal was on its way to every member of the Pennsylvania General Assembly.

We noted to the Legislature that the Supreme Court ban was neither irrevocable nor unanimous, and we reminded our Senators and Representatives of Chief Justice Burger's clear invitation to State governments to act to fill the void left by the *Furman* decision.

Said the Chief Justice:

"... legislative bodies have been given the opportunity, and indeed unavoidable responsibility, to make a thorough re-evaluation of the entire subject of capital punishment."

Our bill was introduced in the State Senate and a similar version was introduced in the State House. Although the bill easily passed the House by a vote of 157 to 38 on September 27th, the Senate did not act before the 1972 session ended and so the bill was reintroduced in the current session on January 22nd.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

The road to final passage, however, will not be easy. Governor Milton Shapp is opposed to this legislation and has vowed that there will be no executions of convicted and sentenced criminals—however heinous and depraved their crimes—while he is Governor of Pennsylvania. However, the Governor may be on the verge of modifying his position—he has recently appointed a special commission to study the question of capital punishment prior to any formal recommendation from his office to the Legislature.

I have accepted the Governor's personal invitation to join in this study, but I have also stated publicly that I will not be a party to any attempt to delay consideration of this important question by the full General Assembly. But the battle will not be and is not being waged solely in the Commonwealth of Pennsylvania. Government officials from 11 States have requested copies of our proposal for possible introduction in their Legislatures. Florida has already reenacted capital punishment and California voters have by referendum approved the death penalty by a margin of more than two to one.

The strong public reaction in California which the referendum approval reflects has been mirrored in the reaction of Pennsylvanians whom I have spoken to and corresponded with in the nine months since the Supreme Court acted.

Furthermore, as you know, United States Attorney General Richard Kleindeinst has announced the Nixon Administration's interest in making the death penalty mandatory for persons convicted of certain classes of treason, sabotage, espionage, and murder. These Administration proposals are now before you as a part of S. 1400.

I believe that the bill which we have proposed for Pennsylvania would meet the requirements set down by the Supreme Court by imposing a mandatory death sentence on any person convicted of murder in the first degree involving:

1. The murder of a peace officer or fireman in the line of duty.
2. A contract murder committed for pecuniary gain.
3. An assassination.
4. A murder committed by a defendant previously convicted of first degree murder.
5. A murder committed by a defendant serving a life sentence.
6. A murder committed during any arson, rape, robbery or burglary where the defendant had previously been convicted of any arson, rape, robbery or burglary.
7. A murder during a kidnapping.
8. A murder resulting from the hijacking of a plane, train, bus, ship or other commercial vehicle.

Under our proposal, after any death sentence has been imposed there must be an automatic review of the sentence by the State Board of Pardons. The Board would have the authority, by a majority vote, to reduce the sentence to life imprisonment after consideration of specific aggravating and mitigating circumstances.

Aggravating circumstances would include:

- a. The defendant was previously convicted of another murder or a felony involving the use or threat of violence to the person.
- b. At the time the murder was committed the defendant also committed another murder.
- c. The defendant knowingly created a great risk of death to many persons.
- d. The murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping.
- e. The murder was committed for pecuniary gain.
- f. The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

As you can see, we have not included subsections (vi), (vii), or (viii) of Section 1-4E1(b)(3) in our list of aggravating circumstances, but rather we have made provision for these instances in our enumeration of the types of first degree murder for which the death penalty shall be mandatory, as listed above at (1), (3) and (5).

Mitigating circumstances under our proposal would include:

- a. The crime was committed while the defendant was under the influence of extreme mental or emotional disturbance.

b. The defendant acted under unusual pressures or influences or under the domination of another person.

c. At the time of the offense, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication.

d. The youth of the defendant at the time of the offense.

e. The defendant was an accomplice in the offense committed by another person and his participation was relatively minor.

f. The defendant has no significant history of prior criminal activity.

Included in S.1, but omitted in our proposal, is Section 1-4E1(b)(1)(vi), which provides as an additional mitigating circumstance: "the crime was committed under circumstances which the offender believed to provide a moral justification or extenuation for this conduct and which is plausible by ordinary standards of morality and intelligence. . ." Our experience has indicated no substantial reason to include the provision among possible mitigating circumstances.

These provisions, I feel will give our bill the uniform application across the State which the *Furman* decision demands. We will not have the problem of a court in Philadelphia imposing the death sentence in a case where a Pittsburgh court would not, and with the Pardons Board review we preserve the flexibility which we need.

Thus, with the exceptions noted above, our proposal is substantially similar to Section 1-4E1 (p. 48-50) of Senate Bill 1. Our bill, of course, makes no reference to treason and does enumerate the specific types of homicide for which the death penalty would be applicable. In addition, it provides for a critically important post-adjudication review by our State Board of Pardons.

In order to meet the standards articulated in *Furman*, in our opinion, it is necessary to preclude wanton or freakish application of the penalty by mandatory imposition. Yet it is equally important that the uniform application so achieved retain sufficient flexibility. We provide for a uniform application of this "flexibility" by lodging power to consider both aggravating and mitigating circumstance within one body—the Pardons Board. I would respectfully suggest to this Subcommittee that consideration be given to amending Sections 1-4E1 and 2 to provide for such flexible yet uniform review so that the demands of *Furman* may be met.

I would add that it has been and continues to be the position of the Philadelphia District Attorney's Office that the death penalty has not been wantonly or freakishly applied in Pennsylvania. My Office raised this argument before the U.S. Supreme Court in 1972 in *U.S. ex rel. Phelan v. Brierley*, in *Pennsylvania v. Brown*, and as recently as February 12, 1973 in *Pennsylvania v. Lopinson*. Statistics from our briefs in these cases, detailing the characteristics of incidence of imposition of the death penalty in Pennsylvania since 1960, appear in an appendix to my statement today. To date our petitions have been in vain and the opportunity for oral argument which we have sought has been denied. The petition in the *Brown* case was denied March 26, 1973.

Why do I feel so strongly that the death penalty should be reinstituted? As I stated at the outset, my conviction is a product of over a decade in the prosecutor's office in the nation's fourth largest city. Too many times hardened criminals have openly admitted to me or to members of my staff that they don't carry weapons because of their fear of the death penalty.

Let me cite an illustration. In 1957, three young men named James Caters, George Rivers and Robert Williams decided to rob a North Philadelphia pharmacy. All three were of marginal intelligence levels with IQs in the 75 to 80 range. Yet Caters and Rivers refused to go through with the holdup when they discovered that Williams planned to take a gun.

Williams, 20, lied to Caters, 20, and Rivers, 18, and assured them that he would leave the gun behind since they objected—he even pretended to return the weapon to a nearby drawer. But when Caters and Rivers turned to leave the room, Williams slipped the gun out of the drawer and concealed it on his person.

During the ensuing robbery which netted the trio \$34, Williams panicked and pulled the gun, killing storekeeper Jacob Viner.

The reason I tell you this story is this. If two young men with marginal IQs have enough fear of the death penalty to refuse to participate in a holdup if a gun is going to be taken by an accomplice, then I think it becomes plainly apparent that the death penalty is an effective deterrent to murder.

Perhaps another illustration would be helpful. An incident involving the

Governor of Maryland, Marvin Mandel, recently came to my attention which graphically and dramatically underscores the deterrent value of capital punishment. Asked if he personally favored a restoration of the death penalty in Maryland, the Governor quickly replied, "Yes, I do, and I'll tell you why . . ."

The Governor then described an incident that occurred last July at the Maryland Penitentiary in Baltimore when he arrived during a riot by inmates.

"One of the guards was being held on the fourth floor right out over the ledge and one of the prisoners (a spokesman) was down on the first floor talking to me, and we were trying to talk him into releasing the prison guard," Mandel said.

"He said to me, 'Look, I'd just as soon push him out. I'm here under life sentence and all they can do is give me another life sentence, so what difference does it make?'"

"And I said to him, 'You may be wrong about that.' He said, 'The Supreme Court said I can't get the death penalty.' And I said, 'Yeah, but if it's mandated by the state you could.' And he turned around to another prisoner and said, 'Is he right?' and the other prisoner said, 'He may be right.' He turned around and stopped talking."

The hostage guard was then freed.

Other illustrations are equally as compelling. A case of particular significance to Pennsylvania is the murder of State Trooper Robert Lapp in Lancaster on October 16, 1972, by Alfred Ravnal. Ravnal had been sentence to death for one of three murders which he had committed in New Jersey, but his sentence was later commuted.

Also of significance are two incidents at the State Correctional Institution at Dallas, Pennsylvania which have occurred subsequent to the *Furman* decision.

In the first incident inmate David Scoggins, under a death sentence on a first degree murder conviction, is alleged to have stabbed fellow inmate Alexander Edinger to death.

In the second incident inmate Fred Butler and Ronald Jordon, both under life sentences for first degree murder, are alleged to have stabbed fellow inmate Thomas Wilson to death.

I feel it is appropriate, in view of such incidents, to consider the question of the safety of both inmates and correctional officers subsequent to *Furman*.

Yet another example is the holdup attempt in a Brooklyn, New York, branch office of the Chase Manhattan Bank on August 22nd shortly after the *Furman* decision, during which two holdup men threatened to kill the nine hostages who had been taken because—by the direct admission of one of the holdup men—the death penalty no longer confronted him.

Still another example of the effect that even the possibility of imposition of the death penalty can have is illustrated by the experience of one of the finest prosecutors in the nation, my First Assistant District Attorney, Richard Sprague, in the trial of the Yablonski cases.

Sprague has repeatedly voiced his opinion that it was the possible imposition of the death penalty that motivated the first three defendants convicted in connection with the Yablonski murders to cooperate and offer information leading to evidence of the involvement of others in the case.

He has also noted to me that his success in attempting to secure such cooperation since the *Furman* decision has been sharply curtailed.

The statistics which have been marshalled by both proponents and foes of capital punishment in their efforts to either support or refute the effectiveness of the death penalty as a deterrent to violent crime go both ways and are, therefore, in my judgment inconclusive.

For example, a study of this question by Randolph Childs which appeared in the Pennsylvania Bar Association Quarterly in 1960 compared the murder and non-negligent manslaughter rates per 100,000 population in Pennsylvania (a death penalty State) and Michigan (a State which long ago abolished the death penalty) for an eight-year period and concluded that the Commonwealth's lower rate of 2.97 when contrasted with Michigan's substantially higher rate of 4.23 demonstrated the deterrent value of capital punishment.

Other studies have reached conflicting conclusions and the most thoughtful analyses seem to conclude that mere statistical evaluation of this question is not too helpful.

The prestigious Royal Commission on Capital Punishment, for example, which began its study of this problem in 1949 and issued its report fully twenty years ago, concluded that there was evidence that "... the death penalty is likely to have a stronger effect as a deterrent to normal human beings

than other forms of punishment . . . ,” but at the same time the Commission conceded that reliance solely on statistical evidence was not at all “convincing.”

And in this country, commenting in 1960 on 1959 statistics comparing the incidence of murder in the nine States which had abolished capital punishment with the 41 which had retained it, the F.B.I. openly acknowledged the deterrent value of the death penalty in its *Uniform Crime Reports for the United States*, and labeled as “completely inconclusive” simple statistical comparisons of murder rates.

More recently, my Office has noted an increase in the number of jury trials and a reduction in the number of guilty pleas in cases in which the death penalty might previously have been a factor. Several of my senior staff members feel, based on their reviews of selected cases, that this change can be attributed to the abolition of the death penalty. Their conclusions are, of course, subjective, but I bring them to your attention so that you may evaluate them in the context of your particular inquiry.

Suffice it to say that, in my opinion, it is imperative that the death penalty be returned to law enforcement as a deterrent tool.

Please do not mistakenly think that I seek this reinstitution because I hold the life of any individual in anything less than the highest regard. I support this legislation because I do hold human life in the highest regard and because I want every tool at my disposal, and at the disposal of my fellow prosecutors, to protect the lives of decent, law-abiding citizens.

I firmly believe that the death penalty is a deterrent to violent crime. I hope you will agree with me and vote for the passage of this proposal.

Thank you.

APPENDIX

PENNSYLVANIA DEATH PENALTY SURVEY—1960 TO PRESENT

Defendant characteristics	1st degree convictions		Death penalties (trial court)		
	Number of cases	Percent of total cases	Number of cases	Percent of total cases	Percent of 1st convictions
Age:					
Under 15.....	4	0.9	0	0	0
16 to 24.....	194	45.1	16	47.1	8.2
25 to 34.....	93	21.7	8	23.5	8.6
35 to 44.....	38	8.8	4	11.8	10.5
45 to 54.....	19	4.4	1	2.9	5.3
Over 55.....	4	0.9	0	0	0
N/A.....	76	17.7	5	14.7	6.6
Total.....	428	100.0	34	100.0	
Race:					
Black.....	249	58.2	19	55.9	7.6
White.....	164	38.1	14	41.2	8.5
Spanish-American.....	6	1.4	1	2.9	16.7
N/A.....	9	2.1	0	0	0
Total.....	428	100.0	34	100.0	
Sex:					
Male.....	413	96.3	32	94.1	7.7
Female.....	15	3.5	2	5.9	13.3
Total.....	428	100.0	34	100.0	
Counsel:					
Court.....	298	69.6	26	76.4	9.1
Private.....	121	28.0	8	23.5	6.6
Pub. def.....	8	1.4	0	0.0	0
N/A.....	3	.7	0	0.0	0
Total.....	428	100.0	34	100.0	
Adjud.:					
Jury.....	306	71.5	24	70.6	7.8
G.P.....	119	27.8	10	29.4	8.4
N/A.....	3	.7	0	0.0	0
Total.....	428	100.0	34	100.0	

¹ Percentages in these columns do not add up to exactly 100 percent due to rounding of component percentages.

MR. SPECTER. Mr. Chairman, I would prefer to start with the issue of deterrence, which is a subject that the committee has already considered this morning, and to express my judgment on this issue, and that is that I believe the death penalty is an effective deterrent against murder. I say that based upon more than 7 years as district attorney of Philadelphia, and dealing with a great many cases in that capacity. We have the frequent occurrence in the criminal courts of Philadelphia where professional burglars have expressed themselves on the point of not carrying a weapon on a burglary because of their concern there may be a scuffle, there may be a dispute, during which the weapon may be used and death may result, and they may face the possibility of capital punishment.

The same situation holds true to young hoodlums who carry weapons on armed robberies. I would like to take just a minute to describe one of the celebrated cases which I have set forth in the prepared text. In 1957, three young men named Williams, Caters, and Rivers, ages 20, 20, and 18, respectively, set out to commit a robbery in the city of Philadelphia. This was a case reported in the Pennsylvania Supreme Court appellate reports.

Williams was the ringleader and had a weapon. He chose two younger accomplices, one of whom was Rivers, age 18. He chose him because he had no police record and could therefore open up the drugstore door without leaving fingerprints which would be detectable. Caters and Rivers, objected to going on the robbery when they saw that Williams had a gun. We found this out later through their confessions and our investigation of the case. I think it highly significant that they did object, because Caters and Rivers had a marginal intelligence level in the 75 to 80 range, but even in that range, they would be apprehensive in a robbery where a gun was involved as a weapon.

Williams, when confronted, said OK, I will leave the gun here, and he put it in a drawer and he slammed it shut, and they all proceeded to leave the room. Unknown to Caters and Rivers, Williams slipped the gun out of the drawer and concealed it on his person. They went to a north Philadelphia drug store, where they came upon a scene involving a man name Jacob Viner, who was the storekeeper. Williams drew his revolver and shot and killed Jacob Viner. The death penalty was carried out as to Williams. Caters and Rivers were sentenced to death and ultimately had the sentence commuted, but the principle was that these two young hoodlums, with marginal IQs, thought twice about going along on a robbery if a weapon was to be involved.

There is another specific case cited by Governor Mandel in January of this year in which he relates a visit that he made to the Maryland prison where there was a riot in process. At that time, there was a prison guard held hostage and pushed out on to the ledge of the wall and a lifer was threatening to push the prison guard off unless the State of Maryland, through its Governor, complied with the demands. The lifer said "Well, what have I got to lose? I have already got one life sentence. There is nothing further to be done to me." Governor Mandel shot back, "Well, you could get the death penalty if it is mandated by law." The man asked some-

body if he was right. The other prisoner said he may be right. The lifer then let the prison guard proceed to safety. Governor Mandel cites that as his reason for being in favor of the death penalty.

Since the U.S. Supreme Court, decision in *Furman v. Georgia*, 408 U.S. 238 (1972), in Pennsylvania we have had two murders at the State correctional institution at Dallas, according to the accounts, by lifers there. The lifer who has nothing to lose, being under one life sentence, has no reason not to kill others. On these occasions, it was two other inmates. And equally there is nothing to stop or protect a prison guard from being murdered by someone who is already serving a life sentence.

I personally believe the statistics on capital punishment are largely inconclusive. Statistics can be cited on both sides of the fence, and I think it boils down essentially to a question of judgment. As I said to you, based upon what I have seen as district attorney of Philadelphia, I firmly believe the death penalty is an effective deterrent.

I think that there is a substantial issue involved in our society in allowing the principles of representative democracy to hold sway, absent some compelling constitutional issue which I do not believe is present on the death penalty case, providing the legislation is sufficiently carefully drawn. I believe that the people of Pennsylvania favor the death penalty. We introduced a bill into the general assembly in Harrisburg last July and it passed by a vote of 158 to 37. It was bottled up in committee in our State Senate. But I think that the sentiment in Pennsylvania is strongly in favor of such legislation and I think it can be constitutionally drawn. I would like to come to that in a minute.

I think the other States which passed a death penalty strongly support that and the California Referendum is an illustration that the people in our society do expect law enforcement officials to have at their disposal every legitimate weapon which can be used in the war against crime, especially violent crime like homicide.

I would like now to turn to another issue, if I may, and that is a very basic question which the Supreme Court decided in *Furman*, that the death penalty imposed by the State of Georgia was wantonly or freakishly imposed. There was no uniform or rational imposition of the death penalty as the Supreme Court viewed the facts of *Furman v. Georgia*. The decision of the Supreme Court of the United States was badly split, as is their custom from time to time. Only two of the Justices, Marshall and Brennan, decided that capital punishment was cruel and unusual punishment and definitely in violation of the Eighth amendment prohibition against cruel and unusual punishment. Four of the Justices said that the death penalty was constitutional and three of the Justices in the center said it could be constitutionally applied if a mandatory or rational or non-freakish or nonwanton basis existed. Justice Douglas said it could be constitutionally applied, but that it would take a phenomenal act to satisfy his standards of constitutionality. I think as to Justices White and Stewart, being in the middle, that a realistic approach would be to try to tailor a death penalty law which would fit their standards as to constitutionality. So that Justices White and Stew-

art, in combination with the other four, would constitute a majority of six.

With respect to the issue of whether the death penalty is wantonly or freakishly applied, my office, the Philadelphia district attorney's office, has sought on two occasions to have the U.S. Supreme Court review the application of the death penalty in Pennsylvania because we believe that an analysis of the death penalty in Pennsylvania will show that it is not freakishly or wantonly applied. It is not discriminatorily applied against the underprivileged, nor unconstitutionally applied against the Blacks, which was the central conclusion in the *Furman* case.

I would refer this committee to a statement made by Chief Justice Burger, which I think is really stated for the benefit of State legislative bodies rather than for the U.S. Congress, where he pointed out, and I cite this on page 2 of my statement, "*** Legislative bodies have been given the opportunity, and indeed unavoidable responsibility, to make a thorough reevaluation of the entire subject of capital punishment." I would suggest just as respectfully that it would be very useful for this committee to make such an evaluation of capital punishment as you are doing now, and even to move into the area as to whether capital punishment as applied by the Federal Government, which, of course, is your fundamental responsibility but perhaps even as to State governments, is applied in a wanton or freakish way. We have an unfortunate situation—I think it is unfortunate—that when a case arises from a State like Georgia and the *Furman* decision is handed down, and it arose from Texas as well in a joint decision, that all of the States are bound by that adjudication, even though the underlying facts in the other States may not really support it. My office joined, immediately after the *Furman* decision, with the State of Texas and with the State of Georgia in urging reargument by the U.S. Supreme Court on the basic issue, speaking for Pennsylvania, that Pennsylvania's laws were differently applied. That petition for reargument was denied.

Then, as we have had a number of our death cases move up through the appellate courts and have had our death sentences changed to life imprisonment under the authority of *Furman*, we have then petitioned the Supreme Court of the United States for certiorari on the ground that the factors in Pennsylvania were not discriminatory under their rational in *Furman v. Georgia*.

My office has made an exhaustive study of the cases involving 428 first degree murder convictions in Pennsylvania from 1960 until October 3rd in 1972. We have taken these cases and have analyzed them with respect to how frequently the death penalty is imposed; in what number of cases Blacks are sentenced to the death penalty as contrasted with whites; in what percentage of cases the death penalty is imposed in cases involving court appointed counsels opposed to private counsel; and in what percentage of cases the death penalty is imposed for guilty pleas as opposed to trials by jury. We came to the conclusion, which we feel is factually supported statistically under these cases, that under Pennsylvania law the death penalty is not wantonly or freakishly applied nor does it discriminate against the underprivileged or impecunious against the Black.

I attached as an appendix to my statement some of these basic statistical materials. For example, taking the 420 cases where murder in the first degree resulted in Pennsylvania in that 12-year span, in 34 of those cases capital punishment was applied. That is slightly under 8 percent of the cases, 7.9 percent. Among the 249 Blacks, 19 received the death penalty, 4.6 percent, contracted with 14 whites who received the death penalty out of 164 tried for 8.5 percent. So that in Pennsylvania the death penalty was imposed in a slightly higher rate on white defendants than on Black defendants.

With respect to the issue of court appointed as opposed to private counsel, our statistics showed that Blacks had private counsel in a higher percentage of cases than did white defendants. In court-appointed counsel cases, out of 298 some 26 received the death penalty for a percentage of 9.1 percent; whereas in private counsel cases, out of 121 cases, 8 received the death penalty, for 6.6 percent, which is really in the same ballpark on that kind of a statistical computation.

With respect to jury trials, 306 defendants were tried by a jury and 24 received the death penalty, for 7.8 percentage, while 119 entered guilty pleas and 10 received the death penalty, for 8.4 percent. So that the range is still very close, we would submit. Taking these statistics as a whole, it is our conclusion and our submission in analyzing these 428 cases that the death penalty was imposed in some 34 instances determined by the nature of the murder itself and the prior criminal record of the defendant, and we would submit to this committee that those are two very good reasons for the imposition of the death penalty and two reasons which would withstand constitutional scrutiny.

I would submit to this committee that the U.S. Supreme Court, when the death penalty issue reaches that Court again, if it does, would place great reliance on factual findings, obviously supported by evidence that this committee would reach. I would cite in support of that the decision which the U.S. Supreme Court gave in *Frazier v. Cupp*,¹ a murder case in Oregon. I argued that case on behalf of the National District Attorneys Association and made the argument on behalf of the States that the State prosecutor should have no more rigid standard in terms of what is an unconstitutional confession than do the Federal prosecutors. The 14th amendment due process clause, picking up the fifth amendment privilege against self incrimination and the sixth amendment right for counsel, should impose no more rigid standards on the State prosecutor. In 1968 Congress enacted the Omnibus Crime Act which said a confession should be admitted into evidence if it were constitutional, not limited to precise warnings. The U.S. Congress came to that conclusion after making an exhaustive legislative inquiry and finding that the restrictions of *Miranda*² unduly limited law enforcement agencies.

It is a curious situation in the law today that the Omnibus Crime Control Act does establish a different standard for admissability of statements or confessions than that which is the law of Pennsylvania, for example, or any other State which is bound by the *Miranda* decision. But the different standards on confessions under the 1968

¹ *Frazier v. Cupp*, 394 U.S. (1969).

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

Omnibus Crime Control Act have not yet been decided by the Supreme Court of the United States as to whether they are constitutional or are unconstitutional. But when the case of *Frazier v. Cupp* was argued and we made the oral presentation that the Supreme Court should overrule *Miranda* based upon the federal standard enacted by Congress, which was presumptively constitutional based upon their substantial factual findings, the U.S. Supreme Court declined to meet that issue, but instead permitted the confession to be used in *Frazier v. Cupp*. It is hard to draw conclusions along this line. But I think the Court sought to avoid a head-on confrontation with the Omnibus Crime Control Act of 1968. So if this committee were to make the same kind of legislative finding as this committee did in 1968—and, as Senator McClellan has previously noted, I had the privilege and opportunity to testify before this committee at that time and presented certain statistical data there as to how the *Miranda* decision had reduced the opportunity of State law enforcement agencies to obtain confessions—I think an analogous inquiry made by this committee would be very persuasive and give prosecutors and law enforcement agencies a forum to come and present their arguments, because we have not had the opportunity to present arguments to the U. S. Supreme Court, even though my office has sought to do so in a number of cases since the *Furman* decision.

If I may, I would like to present one other idea for your consideration. That is the concern which I have over the provision of both section 1-4(e) (1), as well as the provisions of Senate Bill 1400, in terms of possible constitutional objections that may be rendered. Starting with provisions of 1-4(e) (1), I am concerned that the Supreme Court of the United States might well conclude that allowing the ultimate judgment on the imposition of death or life imprisonment to reside with either the court or a jury based upon a set of aggravating and mitigating circumstances leaves too much discretion in the hands of the fact finder. This might leave the Court on the pivotal opinions of Justices White and Stewart to say that there is still latitude for irrational or discriminatory or freakish or wanton imposition of the death penalty, that even under those standards a jury in Georgia might come to a different conclusion than a jury in Pennsylvania.

I am similarly concerned by a number of the provisions in S. 1400, and if I could focus just for a minute on the provision of section 2401, which relates to sentence of death, and specifically to subparagraphs (b) (2) and (b) (3), where there are a series of circumstances where the imposition of the death sentence would be precluded. One would be in subparagraph (b) (2) where the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution, or subparagraph (b) (3) where a defendant was under unusual and substantial duress. My concern arises from the possibility of an argument that submitting such discretionary considerations to a jury might lead different juries on identical offenses to come to different conclusions. I would submit to this committee that a much safer basis for imposition of a death penalty would be to establish it on a mandatory

basis for a specific type of offense, no ifs, ands, and buts, in terms of the imposition in that specific case. As, for example, an assassination of a Federal official, or a hijacking of a plane where death results. I would then provide that the requisite flexibility comes into play by a similar procedure which my act has imposed, that is to have every case where the death penalty is imposed reviewed automatically by the Board of Pardons of Pennsylvania, by the State Board, or on the Federal level, by the Federal Board of Pardons, and then permit that board to review the case under the standards which you may set forth under mitigating and aggravating circumstances, and in our drafting legislation we made virtually identical provisions. In that way there would be one single body which would be considering the issue of reduction from death to life imprisonment, and in that way there would be the best possible guarantee that there would not be a different set of values imposed, say by a jury in Pennsylvania as opposed to a jury in Georgia, but if one body, the Federal Board of Pardons, were to consider the case and the second case, then I think there would be the strongest possible factors in favor of uniformity.

We have taken that approach in our Pennsylvania legislation in asking for the death penalty in eight categories of particularly outrageous and heinous murders, such as an assassination of a public official, such as a contract killing, or a murder committed by someone serving life imprisonment, or a murder occurring in the case of robbery or rape where he had previously been convicted of robbery or rape.

Senator McCLELLAN. As I understand it then, the Pennsylvania legislation for the first offense would not impose the death penalty for a murder in connection with the crime of rape, but would permit a life sentence the first time and give the defendant another chance?

Mr. SPECTER. I am saying I don't like the concept of the second chance, but like even less not having the death penalty at all. My judgment is, Senator, that if we are to retain the death penalty, we will have to apply it in two categories of cases. One category where we have a recidivist, someone who has previously been convicted, and the second category where it is a rational, calculated act. We do have another provision, and that is in the case of the killing of a police officer where I think special circumstances work because of the unique risks which a police officer faces.

So when you say to me, Senator, would I not like to have it available for a person who murders in the course of a rape on the first instance, I would answer yes, I would like to have it available, but our legislation does not provide that, because I think we have to be more restrictive in the application if we seek to have it imposed and get the State law back into effect on it.

But I think that as it would apply to Pennsylvania, or as it would apply nationally by analogy, in order to have a constitutional death penalty for our State I want to be sure that a jury in Philadelphia will not be imposing a death penalty in a case or a jury in Pittsburgh will not be imposing life imprisonment to give the U.S. Supreme Court grounds to say that different juries under different circumstances will treat different offenses in different ways. That is

why our proposed legislation in Pennsylvania will vest the authority to reduce from death to life imprisonment in the pardon board, and that is why I would make the same suggestion for this committee, because I think that flexibility is necessary if we are to have the chance of getting the legislation passed. I would like too see it handled by one body under the most uniform standards possible.

Senator McCLELLAN. One other question. How do you describe the standards or define the standards that would require the imposition of the death penalty in a mass murder?

Mr. SPECTER. Excuse me, sir, what kind of a murder?

Senator McCLELLAN. Mass murder. Under the criteria that you have prescribed in your legislation in Pennsylvania, what would happen in a case like the assassination of the Yablonskis? That is a mass murder. They go in there and deliberately kill three or four people.

Mr. SPECTER. Under our statute that would call for the mandatory imposition of the death penalty because it is a contract murder committed for pecuniary gain.

Senator McCLELLAN. That is not necessarily for pecuniary gain. They were not in there to rob.

Mr. SPECTER. They were paid to commit the murder, though.

Senator McCLELLAN. They probably were paid, that is a factor in it. We have other cases where there is no factor of pay, where people just go in and commit mass murder, a man murders his children, murders his family, There are various instances. We had here in Washington recently a case where the Black Muslims went in a home and murdered women and children. There was someone—Speck—who murdered a number of nurses a few years ago. In cases like that is there no way to reach them? Have we got to apologize for whatever we do to try to bring those people to justice? Do not they forfeit their right to live?

Mr. SPECTER. Senator McClellan, I think with respect to the Muslim killing that would fall under the category of assassination. I think with respect to the Speck murder in Illinois, some 8 or 10 years ago, that I would prefer to see legislation enacted which would call for the death penalty as to a defendant like Speck. But I would submit to this committee that our first step that we can have upheld on constitutional grounds. That is why, even though I would prefer to do it differently if I had my preferences, I would prefer to see a very limited act passed on the most outrageous kinds of killings where there is either a calculation or recidivist factor.

Senator McCLELLAN. What you are saying is we are confronted with a condition where you can't necessarily advocate what you actually believe is the exercise of true justice, but must compromise to accommodate those who would release the criminal. We are going in that direction. We have been going in that direction for years. That is very, very discouraging to me. We have to try to accommodate these extreme views that make it difficult to have law enforcement.

Mr. SPECTER. I would phrase it differently, Senator McClellan. I would say that I would prefer to enact a more restricted bill and have it pass constitutional muster and appear before this distinguished committee again 7 years from now and advocate the broadening of the bill rather than enacting a bill which is broad enough to draw the adverse reactions of the U.S. Supreme Court again. I

think the next time around, if we have a bill which is too broadly drawn and not sufficiently restrictive and careful, will make it very hard to go back on the third occasion. I think we have to be very careful. I think we have to take a short step. I think the whole history of Supreme Court decisions has been made in helping the rights of defendants in very short steps and I think that from the prosecutor's point of view we have not come back with the same kind of an overall tactical approach. That is why I would prefer to see a more limited death penalty bill enacted now which would definitely pass constitutional muster.

Senator McCLELLAN. Well, you may be approaching it from a standpoint of what may be termed practical necessity if we are to get any relief at all.

Mr. SPECTER. Yes, sir.

Senator McCLELLAN. That is your position, if I understand it. We might get this much relief, but even though I believe it is right, we couldn't get relief beyond that?

Mr. SPECTER. I think that is true, Senator McClellan, and I think we are going to have to approach this bill to be sure that it is mandatory and is not susceptible to being wantonly or freakishly applied or discriminatorily applied, and we will have to buttress it on certain classes of offenses where we can make our strongest arguments for deterrence, and if we deal with emotional crimes, which you might think call for the death penalty and I might agree, then we will not have the strongest basis for that argument in terms of the current impact and it will run the risk of being upset by the court again.

Senator McCLELLAN. I don't think the Yablonski murder was an emotional crime.

Mr. SPECTER. I don't either, and I will cover that in my bill pending before the Pennsylvania General Assembly.

Senator McCLELLAN. I don't think robbing somebody and killing them is an emotional crime. It is a deliberate, premeditated crime of the highest order. They mean to get that money and if it is necessary to kill, they kill. I don't see how we can justify these things. They rob a bank and kill several people and yet are entitled to live.

I don't know the answer, but I am greatly disturbed. I am greatly disturbed, and I think many other people in this country are disturbed. Those who have been moving towards protection, greater protection for the criminal have not demonstrated to me that this is protecting society. I think in many instances where they have moved in that direction they have moved at the expense of the safety of the lives of human beings, and we are paying a heavier penalty in human life by reason of the weakening of the law-enforcement processes than we would if we enforced it occasionally and imposed a death penalty in carrying it out. It is very distressing to me to see what is happening in this country with respect to law enforcement.

Mr. SPECTER. Senator McClellan, I would respond to that by citing the experience of the McClellan committee with the *Miranda* decision. You responded to that with a very careful, limited approach to the issue of confessions and statements, and you left latitude for the courts to consider the factor of *Miranda*, but you concluded it would not be conclusive absent one of those warnings or waivers.

Senator McCLELLAN. I have always thought that a jury that was

competent to pass upon the guilt or innocence of a defendant was certainly competent to judge whether a confession was voluntary or coerced. I always felt that way. If it is not competent to judge whether a confession or statement was free of coercion or intimidation, I don't see how it would be competent to pass upon the guilt or innocence of a person. That is the position I took with respect to *Miranda*. I still believe I was right. You are probably correct. I wasn't trying to argue with you. You are probably correct that if we get any relief at all it is going to be the very minimum.

Thank you very much.

Any questions?

Mr. BLAKEY. I have one or two, Mr. Specter, if I might. Would you make available to the committee the larger study that you have and not just statistical?

Mr. SPECTER. Certainly.

Mr. BLAKEY. Secondly, when the Supreme Court denied certiorari did you read that as a rejection of your argument?

Mr. SPECTER. Yes.

Mr. BLAKEY. On the merits or rather just that the Court would prefer to hear it at a later time?

Mr. SPECTER. My reaction is that they don't care to hear it at all. I appreciate the rule of law that when certiorari is denied it has no meaning at all as to the underlying merits. That is the standard legal doctrine, but if the U.S. Supreme Court was going to consider what is happening in Pennsylvania, one would think they would have considered it on a petition for reargument. When *Furman* was decided the Court reversed two of our capital cases, so we had standing to petition for reargument. So we lost that and they say they will not hear it on reargument. We had cases coming up from the Court of Appeals for the Third Circuit in which we raised the argument again. Why would they be likely to consider it the next time around if they did not on two previous cases?

Mr. BLAKEY. What if the Court thought it would be wise as a policy matter to consider some of the statutes rather than to get into the business of considering them further?

Mr. SPECTER. If they do that, it will be a new statute.

Mr. BLAKEY. It seems to me the thrust of the evidence that you presented was their previous decision was overreaching, that it may have been correct in certain places and certain times but certainly not correct in all places and all times. I wonder if the new statute that would be enacted by the Congress or the States, if it were substantially different from the old statute, whether the evidence under the old statute would really be relevant? The new statute would have a presumption of constitutionality, and since there would be no evidence of experience under the new statute, no evidence of either discrimination or nondiscrimination, the Court would then have a pure case? It would have to face the constitutionality of the death penalty per se and have to face the question squarely. I wonder how helpful it would be for the committee to study evidence of discrimination under statutes substantially different than the one which it is considering?

Mr. SPECTER. Well, I think it would be very helpful for two reasons. One is that if we assume new legislation is to be passed, say,

here by the Congress or the Pennsylvania General Assembly, the case then comes back to the U.S. Supreme Court and inevitably you argue about the last case, you seek to change the conclusion in the last case, and if in Pennsylvania we can show that even under prior practice there was a nondiscriminatory use of the death penalty—

Mr. BLAKEY. It would help your case if you could show the absence of it, but if the defendant could show the presence of discrimination under the old statute, unless he can project that onto the new statute, it would be irrelevant.

Mr. SPECTER. Correct.

Mr. BLAKEY. And it would come to the Court with the presumption of regularity and constitutionality.

Mr. SPECTER. It is true that evidence would work to help the state, the absence of evidence would not hurt the state because we would have a new law, but the presence of this evidence would be helpful to us, I think.

Mr. BLAKEY. Is it *sine qua non* of the committee going forward that it has extensive factual studies such as yours on a 10-, 50-, or 15-State basis? It certainly wouldn't be?

Mr. SPECTER. I would not represent it would be *sine qua non*. I wouldn't represent it to be that indispensable, nor do I believe the committee would have had to make those exhaustive studies when it passed the Omnibus Crime Bill of 1968, but I can tell you the arguments to the Supreme Court in order to point to this committee what I felt was very persuasive. The U.S. Supreme Court has very limited factual bases for its conclusions. It does not engage in the extensive proceedings which this committee does. I think the U.S. Supreme Court would be loathe to tangle squarely with the conclusion by Congress on the facts.

Mr. BLAKEY. Thank you, Mr. Specter.

Senator McCLELLAN. Thank you very much.

We have two witnesses this afternoon, Judge Lumbard, U.S. Court of Appeals, and Judge Hoffman, Chief Judge, U.S. District Court, Eastern District of Virginia.

Gentlemen, we look forward to hearing you this afternoon.

Thank you very much.

[A luncheon recess was taken 12:25 p.m.]

[Additional material submitted for the record follows:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES,
Washington, D.C., March 30, 1973.

Memorandum to: Senator John L. McClellan.

From: G. Robert Blakey, Chief Counsel, Subcommittee on Criminal Laws and Procedures.

Re: Sentencing of Organized Crime Offenders.

You asked for a short memorandum summarizing several of the more egregious instances of inadequate judicial sentencing uncovered during the processing of Title X of the Organized Crime Control Act of 1970 (P.L. 91-452). These eight cases are taken from the experience of the Department of Justice from 1960 through March of 1969.¹

They are representative of the data that led the President's Crime Commission in 1967 to conclude:

"There must be some kind of supervision over those trial judges who, because of corruption, political considerations, or lack of knowledge, tend to

¹ See *Measures Relating to Organized Crime*, Hearings before the Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, United States Senate, 91st Cong. 1st Sess., pp. 129-39 (1969).

mete out light sentences in cases involving organized crime management personnel. Consideration should therefore be given to allowing the prosecution the right of appeal regarding sentences of persons in management positions in an organized crime activity or group.”²

1. Anthony “Tony Ducks” Corallo

One of the worst gangsters uncovered in your labor racketeering investigation by the Select Committee was Anthony “Tony Ducks” Corallo. A captain in one of New York’s five Mafia “families”, Corallo won his nickname of “Tony Ducks” because he always managed to duck the law. One exception was a 1941 narcotics conviction that netted him only a six months jail term. Your hearing record amply showed how Corallo helped Jimmy Hoffa gain control of New York City’s 140,000 Teamsters by bringing in 40 hoodlums to intimidate the rank-and-file membership. The hoodlums had records of 178 arrests and 77 convictions for crimes ranging from theft, robbery, burglary, and stinkbombing to extortion and murder.

In 1962, however, Corallo was convicted under a federal anti-racketeering statute: he had conspired to pay a \$35,000 bribe to a New York judge and an assistant U.S. attorney to “fix” a friend’s sentence for a \$100,000 bankruptcy fraud. Yet when Corallo’s sentence was handed down, he drew—despite his public record as a vicious racketeer—only two years, instead of the maximum five-year prison term. Of the two years, he actually served 18 months, and in 1968, federal investigators publicly stated, Corallo and his gangster associates were once again controlling at least seven of the 56 Teamster locals in the New York area, forcing millions of consumers to pay hidden tribute.

In June 1968, Corallo stood before the same judge, this time convicted under the same federal anti-racketeering statute. By loan-sharking a financially pressed New York City water commissioner, he had been able to arrange and share a \$40,000 kickback on a city contract. In sentencing Corallo, the same judge who sentenced him a few years before observed:

“What the court noted then about him still remains true. His entire life reflects a pattern of anti-social conduct from early youth. It is doubtful that his money over any substantial period of his adult life came from honest toil. It is fairly clear that his means derived from illicit activities—bookmaking, gambling, skylocking and questionable union activities.”

Nevertheless, the court this time—incomprehensibly—gave Corallo only three years out of a possible five.

2. Louis “The Fox” Taglianetti

Tragically, the Corallo sentence was far from an isolated case. In 1966, Louis “The Fox” Taglianetti, a “soldier” in the Patriarca Mafia family which dominated New England at that time was convicted of income tax evasion, for which he could have received five years. Since Taglianetti’s Mafia record was exposed in your organized crime hearings held by the Permanent Subcommittee on Investigations in 1963, the judge could not possibly have been unaware that he was dealing with an organized crime figure. Yet the judge gave Taglianetti only seven months in jail. Ironically, for the ordinary citizen convicted that same year of tax evasion, the average sentence was ten months in jail.

3. Arthur Tortorello

The sentencing story of Arthur Tortorello fits into the same pattern. His criminal record, which then covered 4½ pages, began in 1929—four decades ago. A member of the Gambino family of New York City, he has collected arrests ranging from burglary, assault and battery, and forgery to a one-year sentence for kidnapping. More recently, his forte has been the infiltration of legitimate business to commit the so-called “white collar” offenses, knowing perhaps that there he could lighten his sentencing liability. Our judges have fulfilled what must have been his fondest hopes. In 1960 in a \$750,000 stock swindle he received 90 days out of a possible five years. In 1967, for plotting an illegal sale of oil stock, instead of five years, he received thirty days in jail.

² *The Challenge of Crime in a Free Society*, Report of the President’s Commission on Law Enforcement and Administration of Justice, p. 203 (1967). As you, of course, know, Title X grants to the prosecutor that right of appeal, 18 U.S.C. § 3576.

4. *Jerry Angiulo*

Jerry Angiulo, the underboss in the Patriarca family was publicly charted in your 1963 hearings as New England's No. 2 thug, involved in gambling, shylocking, burglary, robbery and larceny. In 1966, he was convicted for assaulting a federal officer. Yet, instead of the possible three years, Angiulo got only thirty days in jail.

FBI agents, incidentally, were electronically monitoring boss Patriarca's headquarters at that time, and they recorded how Angiulo discussed his pending prosecution in detail, plotting to defeat it by procuring a blind man to perjure himself and establish an alibi, then getting a second "stand-up-witness" to lie that he, too, saw the phantom encounter.

5. *Joseph "Joey" Glimco*

In 1966, after four years of effort, the FBI unraveled a complicated transaction and made an airtight case against Joey Glimco, another familiar figure from your Senate labor-rackets investigations. Glimco ruled Chicago's Teamster Local 777, embracing 5000 taxi drivers and miscellaneous maintenance workers. Crony of Chicago's top mobsters, Glimco had a record of 36 arrests on charges including robbery and murder. Glimco was shown in your hearings to be a common thug and criminal who gained control of this union by violence and by those strong-arm methods which are a stock-in-trade of the Chicago racketeer. Under Glimco, Local 777 became a captive union. He ruthlessly stifled any opposition by the membership, while he ransacked the union treasury.

As payoffs for a bogus contract that protected a businessman from the organizing efforts of legitimate unions, Glimco had taken, according to the Bureau's investigation, gifts ranging from a home sprinkler system to a sporty Jaguar. The investigation and prosecution cost the government well over \$200,000, and resulted in a four-count indictment that could have got Glimco a year in jail on each count. Yet, in February 1969, he was allowed to plead guilty, pay only a \$40,000 fine and return to his union piracy.

6. *Rocco Potenzo*

In Chicago, Internal Revenue Service agents for two years were also dogged gambling kingpin Rocco Potenzo, right-hand man of local Mafia boss Sam "Momo" Giancana. They suspected him of secretly operating several honky-tonks under false licensing arrangements. Through persistent investigation, they were eventually able to prove that Potenzo feloniously operated without federal liquor licenses, under the names of "front" men. One of the small fry whose name Potenzo fraudulently used got a three-year sentence. But Potenzo himself, convicted before another judge on five counts and facing up to 15 years and a \$10,000 fine, received only a \$1000 fine—and no jail term.

7. *John Lombardozi*

John Lombardozi is a member of a Mafia family himself and the brother of a captain in New York's Gambino family. In September of 1967, he pleaded guilty to bankruptcy scheme defrauded creditors of a Brooklyn jewelry store of some \$20,000. For that, Lombardozi got a two-year suspended sentence and five years' probation—not one day in jail. For the smuggling conviction, a possible ten-year conviction, he got probation, too. Convicted with three other *mafiosi* of assaulting an FBI agent whose skull they fractured, Lombardozi went to jail for 16 months. In the theft of more than a million dollars' worth of securities from a Wall Street broker, he got four years' imprisonment. Altogether, on four separate felony convictions, which could have got him 28 years, Lombardozi drew just over five.

8. *Jimmy "The Weasel" Fratianno*

In California, Jimmy "The Weasel" Fratianno, released after a five-year prison term for extortion, turned up with a Mafia-financed fleet of trucks hauling dirt on a federal interstate-highway project. Could the "West Coast executioner for the Mafia" (so labeled in a California legislative report, officially credited by police intelligence with at least 16 gangland killings, suddenly "go legit"? Investigators soon found out: Fratianno, over a period of months, had swindled his drivers of \$24,374 by paying them substandard wages, while collecting federal highway funds for the prevailing union scale. In July of 1968, he was convicted on sixteen counts of conspiracy and filing false statements. But Fratianno, instead of a possible eighty years in prison, received a mere \$10,000 fine and a three years' probation.



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CAPITAL PUNISHMENT

Report of the Secretary-General

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INTRODUCTION

1. The General Assembly, in its resolution 3011 (XXVII) of 18 December 1972, requested the Secretary-General to prepare the report called for by the Economic and Social Council in its resolution 1656 (LII) in such a way as to up-date the reports provided in 1962 and 1967, 1/ and to inform the Council of the progress made in collecting the information requested in paragraph 6 of General Assembly resolution 2857 (XXVI). The General Assembly also requested the Council to consider at its fifty-fourth session the current situation and trends with regard to capital punishment. This report is intended to meet the General Assembly's request and assist the Council in its discussion of the subject.

2. Nearly 14 years ago, on 20 November 1959, the General Assembly adopted its first resolution (1396 (XIV)) on the death penalty. As a result, the Economic and Social Council considered that question at the twenty-ninth session with particular reference to the laws and practices relating thereto and to the effect of the death sentence or its abolition on the rate of criminality, and, by resolution 747 (XXIX), requested the Secretary-General to prepare a factual review of the various aspects of the question. Subsequently, the two substantive reports mentioned above were prepared.

3. In 1963, the Council, by resolution 934 (XXXV), recommended that Governments remove capital punishment from the criminal law concerning any crime to which it was in fact not applied, nor intended to be applied; give consideration to the facilities available for the social and medical investigation of the case of the offender liable to capital punishment; and ensure the most careful legal procedures and the greatest possible safeguards for the accused.

4. In 1968, the General Assembly, through the Economic and Social Council, 2/ invited Governments of Member States to provide careful legal safeguards for those accused of a crime punishable by death. Specifically, it recommended (1) that the right to appeal and to petition for pardon be provided; (2) that a death sentence be not carried out until the procedures of appeal and pardon are terminated; and (3) that special attention be given to indigent persons by providing adequate legal assistance. It also asked the Governments to consider the possibility of fixing a time-limit before the expiration of which the death sentence in each case would not be carried out.

5. In 1971, the Council, in its resolution 1574 (L), affirmed "that the main objective to be pursued is that of progressively restricting the number of offences

1/ Capital Punishment, published in 1962 and Capital Punishment Developments, 1961 to 1965 published in 1967. Issued jointly as United Nations publication, Sales No. E.67.IV.15.

2/ General Assembly resolution 2393 (XXIII); Economic and Social Council resolution 1337 (XLIV).

/...

for which capital punishment might be imposed with a view to the desirability of abolishing this punishment in all countries". 3/ The General Assembly made a similar affirmation in its resolution 2857 (XXVI).

Limitations of the present report

6. As mentioned earlier, the present report is intended to up-date the earlier reports and to inform the Council on the legal procedures and safeguards applied in capital cases and on the attitudes of the Member States to possible further restriction of the use of the death penalty or its total abolition.

7. However, attention must be drawn to the necessary limitation of this report. No pretention could be made, for example, of providing in a report of this kind a detailed or even general account of the precise situation in the law and practice of any given Member State. Apart from the fact that laws and practices are constantly changing, any national law review is a complex matter - even if only for the purpose of describing the use of the death penalty.

8. This report is based largely on the replies of Member States to the Secretary-General's notes. Although the ratio of answers was unusually high, 4/ many replies were not complete or were ambiguous and data have, therefore, been gathered from other sources in order to complete the gaps in the information provided. Many problems were encountered in reporting on the application in actual practice of the legal provisions. Some replies provided information on statutory rules and not on their implementation; some provided the laws in detail, others did not. It was also difficult to generalize and draw comparisons between the provisions of different legal systems.

9. Nevertheless, despite these shortcomings and the obvious need for a more scientifically designed and intensive study to provide complete data, it is significant that this is the first report of its kind providing information from such a large majority of Member States.

Outstanding issues

10. The task of this report would be facilitated if all the trends were clear and if all the moral and utilitarian issues could be either totally excluded or were already decided. In some respects it is surprising that these issues of

3/ Underscoring added.

4/ Between March 1969 and December 1972, 84 Member States replied. For substantial excerpts of these replies, see ST/SOA/118 and addenda. The reports published in 1962 and 1967 were based, respectively, on 64 and 54 official replies from Member States.

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principle are not yet settled since at least 70 years ago Enrico Ferri, a pioneer criminologist was already writing of capital punishment as a topic "worn out from the intellectual point of view". 5/

11. The Declaration of Human Rights with its emphasis on the basic right to life should also leave little doubt as to the positive trends in civilization's struggle to improve the conditions of human existence. Even if it be argued that, in the interests of the people, the State has power over life and death, the United Nations Declaration of Human Rights should at least indicate the direction of progress. 6/

12. Whilst the imposition of the death penalty for reasons of vengeance or revenge finds few if any advocates, and the notion of a premeditated judicial killing is generally abhorred, retributive justice and necessity in the public interest are still considerations which hold considerable sway. As new forms of terror and violence evolve in society, the tendency to revert to the death penalty as the main deterrent is conspicuously increased. There are large bodies of people and a wide range of authorities who believe that capital punishment is necessary either as a deterrent or at least as a matter of basic justice.

13. Whether or not it really deters, the way in which States still use this penalty in times of emergency shows the persistence of its appeal. For every State Member of the United Nations devoted to the abolition of capital punishment in law or fact there would appear to be three others legally committed to its sanction and use - at least as a very last resort. 7/ Moreover, there are examples of some States abolishing the death sentence, but then returning to it either in law or practice, either because they see no adequate way of dealing with certain offences or because they feel the need for some final and extreme public denouncement of the particular behaviour for which the sentence is awarded.

14. The debate on the death penalty continues to revolve around the two main questions of its morality and its usefulness. The moral issue is the right of any society to put any person to death, i.e., to deny him his basic human right to live. The question of the utility of capital punishment turns essentially on its efficiency in preventing crime. Then there are a number of subsidiary questions arising from the offences for which the death penalty is used or from the conditions within which it might be applied. Whether, for example, it is a just penalty in some cases or inappropriate to the nature of the offence; whether it is only a

5/ Quoted by Marc Ancel, "The problem of the death penalty", Thorsten Sellin (ed.), in Capital Punishment (New York and London, Harper and Row, 1967).

6/ See the articles of the Declaration of Human Rights relevant to capital punishment in annex II.

7/ For a list of Member States and their position on the death penalty, see annex I.

/...

last resort with every possible legal safeguard being accorded to anyone whose life is placed in jeopardy by law; whether in practice it is being applied uniformly or whether it is used discriminatorily, i.e., mainly against particular classes, ethnic groups or sections of society.

The United Nations

15. In the past the United Nations has given consideration to most of these questions. However the main focus in the 1962 and 1967 reports on this subject issued by the United Nations was on the deterrent effect of capital punishment. They concentrated more on the practical issues rather than the moral ones. The conclusion of those reports was that no significant differences in the crime rate could be found before or after the abolition of the death penalty in abolitionist countries. They also indicated that, other things being equal, no significant differences could be found in the crime rates of countries with or without the death penalty.

16. Since the issuance of these reports, the United Nations has gradually shifted from the position of a neutral observer concerned about, but not committed on the issue of capital punishment, to a position favouring the eventual abolition of the death penalty. 8/

17. From the moral standpoint, the United Nations is following the guidance of its Universal Declaration of Human Rights. From the practical or utilitarian point of view, it is acting on the evidence so far made available, and is therefore calling only for the "eventual" abolition of capital punishment. 9/ Not all Member States favour early abolition of capital punishment. Some are moving towards it. Others regard it as right even if not immediately practicable for them, and there are some who feel that capital punishment is an unfortunate but, at this time, unavoidable necessity.

The concept of abolition

18. The concept of the abolition of capital punishment is rather complicated. In its fullest meaning "abolition" should indicate that a country has expunged the death penalty from its laws entirely and that in practice no executions are or can be carried out - not only during normal times but even in times of political crisis when constitutional safeguards for civil rights are suspended and usually harsh special measures are imposed for reasons of state security. Information given by Member States indicates that even countries which are de jure abolitionist

8/ See Council resolution 1574 (L) and General Assembly resolution 2857 (XXVI).

9/ See General Assembly resolution 2857 (XXVI).

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still usually retain the right to impose capital punishment for a few exceptional crimes, such as those related to the security of the State, especially during a war or a period of extreme political turbulence. 10/

19. On the other hand, there are countries which have retained the death penalty in law, but which in fact are abolitionist in that the sanction has not been used for a number of years and in fact a tradition or even a constitutional convention has developed that the death penalty will not be used at all. At least one country has provision for the death penalty in law but has no provisions in its administrative law which would make it possible to execute anyone even if the death sentence was to be pronounced.

Alternatives to capital punishment

20. The problem is undoubtedly complicated by the failure of States as yet to find suitable alternatives to capital punishment or to find other penal methods sufficiently drastic yet humanitarian. A consensus is emerging that taking the life of a person in the course of administering justice is an extreme measure justified only by the gravest conjunctions of crime and social crisis. Even groups or Governments which feel capital punishment to be a necessity of last resort would usually be prepared to dispense with it altogether if an appropriate substitute could be devised.

21. For various reasons life imprisonment - a "living death in prison" - is not always considered a suitable alternative to death. It is obviously less final, it demands more resources and is apparently a difficult sentence to maintain in modern society. On the other hand, the factors of mercy and the apparent rehabilitation of the criminal who may have committed the crime in a fit of passion or outrage, have reduced the full application of life sentences. Even Nazi war criminals sentenced to life imprisonment have been released on grounds of mercy and compassion after serving a long term of imprisonment. The quality of mercy has been extended in some countries to successive reductions in the interpretation in practice of a sentence of life imprisonment so that 10 years' imprisonment or less is frequently held to mean a life sentence. The effectiveness of parole has encouraged its application to more people serving life sentences and there is an obvious difference between the questions of justice related to the offence and justice related to the offenders' suitability for release into society.

10/ For instance, England and Wales retain capital punishment for arson in dockyards and arsenals and piracy with violence, and Peru retains capital punishment for kidnapping followed by homicide.

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I. THE CURRENT SITUATION

22. It is difficult to provide any truly global picture of the use of capital punishment. To do justice to all the elements involved, any study of a world-wide dimension would need to include not only a presentation of the laws in all their complexity and variations from country to country but also a comprehensive exposé of the diversity between nations, their ideologies, their social systems and their cultures.

23. An important consideration in any truly international appraisal is that most published studies of the death penalty have taken their data and orientation from the developed world and largely from the western world. The result has been a rather misleading picture which has frequently given an unwarranted universality to values, theories or practices prevalent in the west. In academic circles it has sometimes become unfashionable to support capital punishment: civilization is tolerance and severity in punishment a sign of backwardness and regression, and so liberal thinking and the abolition of the death penalty are expected to coincide. Therefore the writing available on the death penalty leaves the impression that there is a certain inevitability about the movement to more "civilized standards" and fewer executions. A reader could be excused for concluding that throughout the world there is in fact an irresistible and ineluctable trend towards the abolition of capital punishment or that even where death is still a last legal resort, the penal codes have fewer offences leading to capital punishment or that methods of execution are becoming more humane or that the persons liable to the extreme penalty will usually have the benefit of the best legal safeguards.

24. In fact, the world picture provides no such assurances. If one spreads consideration to include developed countries of both the east and west and the wide range of developing nations in Asia, Africa and Latin America, the picture changes appreciably. It is extremely doubtful whether there is any uniform progression towards the restriction of the use of the death penalty; progress is discernible only in the very long run and it is usually marked by many ups and downs. Periods of abolition or non-use may be succeeded by widespread executions in a revolutionary situation or by sudden return to the death penalty as a sanction where a State feels insecure.

25. Obviously, it is possible to indicate other periods of history when the death penalty was more widely used but a chronological trend would be extremely difficult to establish. There are areas of the world with certain earlier periods of their history which could be held up as models in terms of less severe penalties, less violence and more peaceful ways of life. Very simple societies usually prefer compensation to vengeance or execution and, in terms of blood-letting, economic and social progress may have marked a regression. This is not an argument to be pursued here but it is a fact which unsettles any confidence that higher levels of economic and social development must be reflected in less use of the death penalty.

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26. With respect to the legal abolition of the death penalty, progress towards abolition has been slow. Only seven countries have abolished capital punishment since the signing of the United Nations Charter. Certainly, the number of offences for which the death penalty could be imposed has been declining progressively since the nineteenth century in many parts of the world; but in terms of expunging the death penalty from the criminal codes, since the first abolition by law in 1863 there has been an average of only about six countries abolishing the death penalty every 30 years. 11/

27. In the United Nations report, Capital Punishment, published in 1967, it was shown that, in general, the categories of offences from which the death penalty was removed "are those, particularly homicide, to which it has traditionally been applied; whereas the categories for which it was newly invoked are economic and political crimes". Whilst this trend has continued, there have recently been a number of quite notable applications of the death penalty to armed robbery. Violent crimes have led to calls for a re-introduction of the death penalty for some of the homicides. Apart from economic crimes and corruption, a few newer types of crimes have begun to qualify in some countries for the death penalty. Hijacking, drug trafficking and currency dealing as well as economic crimes and corruption are some of the offences now punishable by the death sentence in certain countries. Even ordinary theft, though not usually regarded as a crime deserving the death penalty, has in some countries received the extreme sanction when in number or size the incidents of theft have seemed to grow beyond control.

28. The death penalty would still appear therefore to be regarded by a considerable number of Governments as an efficient or at least an acceptable way of getting rid of certain types of problems - whatever the experts may have to say about the lack of deterrent effect of this penalty. Moreover, it seems clear that in most cases Governments satisfy public opinion by using this sentence. Whether this popular backing for the death penalty be regarded as desirable, regressive or a sheer lack of understanding, it is nevertheless a factor. Indeed, there is evidence that even the countries totally abolishing capital punishment have sometimes acted contrary to the majority view of the population.

29. Harsher methods of execution have been introduced lately as a supplementary means of frightening potential offenders. For instance, there have been executions preceded by tortures or beating, and even beating to death has itself been a recent method of execution.

30. Whatever the factual position, public execution is still sought as a deterrent. And whether a deterrent or not, it is still regarded as an appropriate response to certain types of conduct - a fate deserved - whatever its specific effects might be.

11/ See table 2 in annex I.

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31. As far as crime is concerned, the deterrent effect of these recent uses of the death penalty still remains to be proved, since the penalty was introduced or re-introduced not very long ago.

32. The countries retaining the death penalty in their laws are by far the majority in the world. There are only nine States Members of the United Nations which, by their own account, are totally abolitionist (see annex I). This picture is, however, an oversimplification. First, there is no clear-cut division between "abolitionist" and "retentionist" States. Those terms do not always indicate the absence or presence of executions. A number of States claiming to be "abolitionist" actually retain the death penalty for one or more "exceptional" crimes such as killing a guard or an inmate when the offender is undergoing a life sentence; the murder of the head of the State, or of a representative of the law such as a policeman; or treason; or kidnapping followed by homicide; or perhaps for crimes of a military or political nature. The most common exceptional crimes punishable by death are treason and crimes related to the security of the State.

33. It is important to note that these exceptional crimes are often judged by exceptional courts with special procedures which often do not give to the accused all the guarantees he would get in an ordinary tribunal in a retentionist country. On the other hand, many of the retentionist countries use the death penalty so sparingly that, if one does not maintain the division between political and ordinary crimes, they may actually be executing fewer people than do certain "abolitionist" countries.

34. It is useful to consider the division drawn between "ordinary" and "political" crimes because today the problem has sometimes shifted from ordinary offenders to political offenders. In the past, there tended to be more tolerance of the political offender and sometimes there might even have been a bar on the sentencing to death of such offenders; currently, the tolerance is rather of the ordinary offender. ^{12/} The moves towards abolition or restriction are usually made in favour of the ordinary offender. This shift to a more intransigent attitude towards the political offender could be due in some measure to the rise in terrorism and guerrilla warfare.

35. The difference between an "ordinary" crime and a "political" crime is always left to the State to decide. In some countries, a great number of offenders condemned to death for ordinary crimes are considered by most neutral observers to be political offenders. On the other hand, it is quite evident that many forms of behaviour can be labelled political crimes and that the Government by this means may find a very useful way to suppress any opposition in the State, and at the same time be considered an "abolitionist". An offender can also easily claim

^{12/} As in France from 1848 to 1960 and in Guatemala today. It is interesting to note that the re-establishment of the death penalty for political offenders in France was linked with the war in Algeria.

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a political motive, when he knows that by doing so he could obtain better treatment or the sympathy of the public. It is becoming more and more common in developed countries to see prisoners and persons condemned to death being supported by anti-government movements as "martyrs". Any ordinary offence can have a political aspect and therefore any ordinary offender could be considered as a political offender. Conversely, any political offence is generally also an ordinary offence and therefore political offenders can be considered as ordinary offenders. For instance, some subversive groups consider stealing and murdering perfectly justifiable ways to bring about the downfall of the régime they oppose and consequently consider those acts (traditionally regarded as ordinary crimes) to be political acts. At the same time, strictly political offences involving aircraft hijacking could be considered as ordinary crimes in the sense that stealing, piracy and murder can be involved. Therefore, it would appear that it is not easy to justify maintaining a division between political and ordinary crimes, between death penalties for political crimes and death penalties for ordinary crimes.

Reported changes since 1965

36. The following are the changes reported by Member States since 1965, in pursuance of General Assembly resolution 2393 (XXIII) of 1968. Only the changes reported by the Governments or the national correspondents on social defence are listed, but other Member States may have changed their laws regarding the death penalty.

Abolition

In Austria, the death penalty was abolished in February 1968 for the exceptional crimes to which it could still be applied. Therefore, Austria is now a totally abolitionist country.

In Finland, where the death penalty could be applied during wartime, capital punishment was totally abolished on 1 June 1972.

In the United Kingdom, the Murder Act passed in 1965 was confirmed by Parliament in 1969 and thus the death penalty was abolished except for treason and, in England and Wales, for arson in dockyards and arsenals and piracy with violence. In Northern Ireland, capital punishment was abolished except for murder of any constable or person in the service of the Crown and murder done in the course of any seditious conspiracy, and also for arson in dockyards and piracy with violence.

In Malta, capital punishment was abolished in 1971.

In Mexico, the states of Nuevo León and Morelos abolished the death penalty, bringing to 29 the abolitionist states and territories of Mexico (out of 32).

In Peru, capital punishment was abolished in 1971 except for kidnapping with homicide and for treason.

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Restrictions of the categories of offences leading to the death penalty

In Australia in 1968, the state of Tasmania abolished capital punishment for murder and the Federal Government abolished it except for murder and treason in the following territories: Australian Antarctic Territories, Australian Capital Territory, Christmas Island, Cocos Islands, Norfolk Island and the Northern Territory.

In Bulgaria, since the new code was introduced in 1968, there has been a reduction of one third of the cases leading to the death penalty.

Other changes

Argentina reintroduced capital punishment in March 1971.

Brazil reintroduced capital punishment in 1969 for crimes against national security with criminal loss of life.

Canada had temporarily abolished capital punishment from 1967 to 1972, with few exceptions, as a trial period before voting on retaining or definitely abolishing the death penalty. The matter is again before Parliament and another five-year ban period will be requested by the Government.

In the United States of America, the Supreme Court ruled that capital punishment was unconstitutional because of the unfairness in its application. To what extent this decision limits the use of the death penalty is not clear yet. Some states have already established the death penalty on a mandatory basis. The Supreme Court's decision seems to allow the death penalty only on a mandatory basis.

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II. THE SAFEGUARDS FOR THE ACCUSED

37. The irrevocable nature of any execution has always been one of the main arguments of the abolitionists. In the face of this irrevocability, the United Nations has sought to promote "the most careful legal safeguards" for those likely to be sentenced to death. Obviously, the abolition of capital punishment by law is the best legal safeguard but, failing that, the United Nations calls for the greatest care to be taken to protect the accused in danger of death before, during and after his trial. The importance of such legal safeguards for the world as a whole may be seen from the fact that 75 per cent of all Member States have to be regarded as retentionist.

38. Moreover, the practice of executing certain types of offenders either without trial or with a hasty prejudicial procedure is still unfortunately too well-known. In some areas and at certain periods, the high standards of judicial practice are circumvented, suspended or disregarded. Fortunately most Member States are aware of this problem and provide safeguards for anyone in danger of capital punishment.

39. It has to be recognized, however, that getting at the truth and protecting the accused are not always compatible objectives. Perfect and unimpeachable safeguards for an accused would make it extremely difficult for there to be any investigation or any hope of evidence being obtained for trial. On the other hand, it is equally obvious that allowing free rein to investigators and prosecutors could invite a miscarriage of justice. The conflict is not new but it has modern dimensions. In earlier times, the need to establish the truth in any given hearing took unquestioned precedence. The need to protect the accused emerged relatively recently. ^{13/} It is also evident that the concept of a safeguard implies a plurality of interests in a society and to some extent a recognition of the human limitations in any system of law enforcement. Where such a plurality of interests does not exist or is excluded by political definition, the attitude to safeguards is bound to differ.

40. In modern times the safeguards fall into different categories. Some are designed to protect the accused from the police, some to protect him from witnesses and some to safeguard him from the public and the mass media, whilst other provisions are intended to give him a measure of protection from possible errors of the judiciary. There are safeguards from political interference and forms of protection from his own ignorance or poverty.

^{13/} Arthur Koestler, in Reflections on Hanging (New York, MacMillan Co., 1957), pages 33-34, reports that in England prisoners on capital charges were not allowed counsel until 1836, that a person charged with a capital offence was not allowed to give evidence on his own behalf on the witness stand until 1898, and that, before a Court of Criminal Appeal was established in 1907, the only hope was the Royal Pardon.

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"Protection" against errors of the judiciary

41. Among the safeguards to "protect" the accused from the errors of the judiciary, that is, from the Court's decision which could, for one reason or another, be unfair to the defendant, the most common are the appeal and the pardon.

The appeal

42. The appeal can be either on question of fact or on question of law. "Appeal", stricto sensu, is the retrial of the case by another and generally higher court while "cassation" is the consideration by a special court of the errors of law in a trial made by an ordinary court. ^{14/} A "revision" is an exceptional procedure, when the sentence is final and therefore no longer subject to appeal and new facts come to light disclosing a miscarriage of justice. ^{15/}

43. The number of times an accused may appeal varies from country to country. For instance, two appeals are possible in Jamaica and Mexico. As a rule, federal States such as the United States of America or the USSR allow for a large number of recourses.

44. In addition, there has emerged more recently new forms of appeal based upon the question of the constitutionality of the charge, the trial or the sentence. A person might claim that the law by which he was tried or the methods used in investigation, or the form of trial, or the sentence passed were either separately or in combination violations of his fundamental human rights embodied in the constitution of the State. Presumably, this is a new acceptance. The right to constitutional protection was always there in countries with human rights clauses in their basic statutes. However, the exercise of this right and the means to lodge an appropriate appeal were not always available as they are now in some countries. The most conspicuous examples of this kind of appeal have occurred in the United States of America in recent years.

45. All sorts of provisions may either restrict the possibilities of appeal, making it subject to certain authorizations, or make it easier. Some systems

^{14/} The following retentionist States reported provision for appeal for ordinary crimes: Australia, Bulgaria, Canada, Cyprus, Greece, Guatemala, Iran, Ireland, India, Jamaica, Kenya, Liberia, Malawi, Malta, Mauritius, Pakistan, Philippines, Poland, Sierra Leone, Singapore, Sri Lanka, Swaziland, Trinidad and Tobago, Zambia. The following States reported provision for cassation: Cameroon, Czechoslovakia, Egypt, France, Hungary, Iraq, Khmer Republic, Lebanon, Libyan Arab Republic, Madagascar, Morocco, Niger, Peru, Rwanda, Spain, Syrian Arab Republic, Togo, Tunisia, Ukrainian SSR.

^{15/} Among the retentionist States providing for revision are: Bulgaria, France, Iran, Iraq, Khmer Republic, Japan, Lebanon, Morocco, Poland, Rwanda, Togo, Ukrainian SSR.

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make the appeal automatic in case of a sentence to death. A number of countries make it an obligation for the judge at the end of the first sentence to remind the accused of his right to appeal. 16/

The pardon

46. This prerogative of mercy is usually vested in the highest executive authority. It is the direct heir of the right of life and death that a sovereign used to have over his subjects. His subjects could always petition for his intervention. As a rule, the pardoning authority is the head of State or of the Government, in a few instances it is a political assembly. The petition for pardon is often automatic. 17/ The pardoning authority generally receives the advice of a special body in charge of reviewing the cases of the persons condemned to death.

47. Another type of protection for the accused is inherent in legal systems where the burden of proof lies firmly on the prosecution. The accused may not even need to speak at all in his own defence. The prosecution must prove its case before he is called upon to reply. 18/ Actually, this obligation on the prosecution prevails in most courts, whether adversary or inquisitorial, because in practice most systems require a substantial case to be established by those bringing a charge. Another protection may be traced in the requirement that before a sentence is passed in some Moslem countries the opinion of the Mufti (legal expert on Koranic law) is requested. In one country, the execution of the death sentence may be suspended for two years and the condemned may be spared subject to good behaviour. In many countries the judge has to justify his decision at the court when he passes the sentence. Naturally, real risk occurs when procedural safeguards of this kind are disregarded, improperly administered, suspended or abrogated by special courts or tribunals in time of emergency, or when the right to appeal against procedural errors is restricted for some reason.

Protection against the police

48. A great part of the search for the truth lies in the hands of the police. Here much depends upon the amount of power invested in the police but there are situations where, in fact, a court simply confirms the police investigation. Generally speaking, the police is the only or, at least, the principal body allowed to use coercion on citizens so that the need to follow this exercise of power with a careful trial is emphasized. In some countries, a police investigation is restricted in time and a case has to be handed over to legally

16/ For instance, in France, the Khmer Republic, Madagascar, Tunisia.

17/ For example, such is the case in Bulgaria, Cyprus, France, Morocco, Sierra Leone, Trinidad and Tobago, Tunisia.

18/ For instance, in the United Kingdom and in the United States of America.

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qualified prosecutors or to junior judges within a specified number of hours. 19/ Here, the accused is protected by a time-limit against police excesses. Elsewhere, the police powers are to some extent governed by the need for court permission to exercise them.

49. In most countries, laws exist to punish the use of physical (less often psychological) coercion as may occur in the course of a police interrogation. 20/ In some countries, the confession of the defendant alone is not enough to condemn him and therefore one of the main incentives for an abuse of investigative power is suppressed. 21/ Sometimes the person detained by the police has the right to ask for a medical examination every 24 hours; the same request can be made by a family member or his lawyer. 22/ In other systems the person accused has the right to refuse to speak at all and may have the right to request the presence of a lawyer from the very beginning of the investigation. 23/

Protection against witnesses

50. This is a subject larger than the scope of this paper but obviously legal restrictions on persons who may give false testimony, which places a man's life in jeopardy, are desirable safeguards. Most countries have laws designed to prevent perjury or to provide for the adequate testing of a deposition by cross-examination before or at the trial. Most countries have laws specifying the relative values of different kinds of testimony given by witnesses. For instance, children or mentally retarded persons may not be allowed to bear witness and corroboration of a witness's testimony is required for some offences. 24/ In some countries young people are allowed to bear witness but without taking an oath, the implication being that their testimony carries less weight than that of an adult. Generally speaking, testimony without forms of circumstantial evidence are not enough to condemn a person in a capital case.

19/ For instance, in the USSR, the accused must be brought to the prosecutor within 48 hours.

20/ Cf. British Judges' Rules.

21/ In the United States of America, the courts' exclusionary rules prevent the introduction of a confession.

22/ Such is the case in France.

23/ As in the United States of America.

24/ A perjury charge, in the United States of America, for instance, must be established by more than one uncorroborated witness, and circumstantial evidence alone is not enough.

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Protection against the public and the mass media

51. A modern State, as a matter of fundamental law and order, protects the accused from the crowd which would sometimes sooner lynch the person suspected of a heinous crime than leave him to the courts of justice. All States with police forces obviously provide for this kind of basic protection against public violence. Yet it is not unknown for this elementary protection to be withdrawn or partially withdrawn in a time of political upheaval or where the offence has political, racial or other connotations.

52. The majority of the Member States also protect the accused from slander, in particular, that which is most likely to come from the mass media and which might possibly influence a jury, the witnesses or the decision of the court. In certain countries the law is very strict about the use of epithets for the accused: "suspect", "accused", "murderer" etc. are words which often prejudge the issue and in some countries there are penalties for implying that the person is guilty of the crime before it has been proved. 25/ In some countries, to protect the young offenders, the trials are not public. This, of course, has both advantages and disadvantages for the accused. Where life is endangered, a non-public trial is not usual except where the offences may have been political and the usual public trial is denied.

Protection against political interference

53. The doctrine of the separation of powers has widespread appeal, and the independence of the judiciary from the executive and legislature is enshrined in many constitutions. But this way of thinking is more characteristic of the western countries than most of the socialist countries. There, the laws must not only reflect the people's will but educate them. The judges, in the USSR for instance, are elected, and there is a great participation of the citizens in the process of law, while, in most western countries, and particularly in the Romano-Germanic systems, the judges are not elected and are nominated for life to ensure their independence. In the countries following the Romano-Germanic system and in the socialist countries, there is a public prosecutor who represents the interests of society. But the actual degree of independence depends greatly upon local traditions and practices. Such independence is likely to be quickly affected by emergency situations and much depends upon the local political realities.

54. In some countries, the "ordinary" criminals may be represented by certain revolutionary groups as being political prisoners. Demonstrations and other forms of protest may be organized by these groups seeking to arouse public opinion and to influence the tribunals. Political intervention of this kind may not confine itself to supporting defendants, but may demand instead the condemnation of political opponents who are before the courts.

25/ As in France and the United Kingdom.

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Protection against ignorance and poverty

55. In most modern societies the laws are too complex for the average citizen, with no legal training, to be able to defend himself. The right to have a defence counsel, and a lawyer in particular, is practically universally recognized, at least for the "ordinary" tribunals.

56. When the defendant is on trial for his life, most countries make it obligatory for him to be legally represented. However, this requirement does not always cover all stages of the proceedings, the investigation stage for instance. The Court is also sometimes obliged by law to remind the accused of his rights, namely, the right to appeal, the right to remain silent etc. This obligation is extremely important for a good protection of the accused, since most of the time he is not "reminded" but learns his rights. This is especially true of the lower-income groups ill-equipped to deal with the intricacies of the law. In the majority of Member States it is an obligation, in the case of a person liable to be sentenced to death, for the Court to provide free legal assistance to the defendant, in countries where one has to pay for the services of a lawyer. In many socialist countries these services are in any case free.

57. Most countries provide for an interpreter in case the accused does not understand the language spoken in the Court.

58. The great majority of Member States report never condemning to death persons under 18 years of age.

Time-limits

59. In its resolution 2393 (XXIII), the General Assembly asked Member States to give their opinion on a supplementary safeguard, namely, the time-limit. This time-limit is the lapse of time before which no death sentence can be carried out. The resolution did not specify any period or say from when this time-limit was supposed to run, whether it should be from the time of the first finding of guilt or from the failure of the last appeal.

60. The answers to these questions tended naturally to refer to different conceptions of time-limits. An overwhelming majority of States, however, rejected the idea of a time-limit. They did not see any justification for setting an arbitrary period of time once the last recourse had been rejected. More than that, they thought a time-limit could be as inhumane as it might be protective and rather favoured a speedy execution of the condemned person once the last appeal had been dismissed. The only country which reported a delay before which no execution can take place was Sweden which, according to the Geneva Convention of 1949 relative to the Treatment of Prisoners of War, does not carry out an execution before a delay of six months following the death sentence. In Cyprus, the execution has to take place between eight and nine weeks after the sentence of the Court of Assizes.

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III. THE LAW IN PRACTICE

61. The evidence is that most countries in the world do provide in their laws for the rights of the defendant. The real problem is one of implementation. Having the right laws enacted to protect a person accused of a capital offence does not invariably ensure the fair treatment of the accused. Gaps in the laws always permit the administrators of justice to make decisions or adopt practices inimical to the rights of the defendant. Or, at times the regular laws may be arbitrarily abrogated to cope with emergencies or circumstances considered too abnormal for the ordinary law to deal with.

62. A fundamental issue here is one of discretion. To what extent can discretion be vested in those charged with the conduct of government or the administration of the law? Law without discretion can be as unjust as untrammelled discretion, but if the legal safeguards enshrined in law are not guaranteed by ancillary measures to monitor the law in action, then the likelihood of an accused in danger of death being denied his rights is greatly increased.

63. It is not enough to enact that no confession should be obtained by torture, measures to prevent any such action must be taken (such as the presence of a lawyer, or medical visits, or confessions not admitted as evidence etc.).

64. Again, the administration of justice reflects the power situation in society; it will have the same values and the same prejudices. For instance, if in a society a group of citizens are discriminated against it is doubtful that they will be treated fairly in the administration of justice, even though there may be no grounds for that discrimination in the laws.

65. One of the most powerful arguments of those who oppose the death penalty in all circumstances is that it has not proved possible in the past to make it sufficiently precise, uniform and consistent. In some countries the authorities are accused of not dispensing the death penalty with an equal hand. If prosecutions fall unequally on the poor and underprivileged, on the minority groups or on the political opposition, then the administration of the law is showing an image considerably different from that presented by the law.

66. Nevertheless, even when people have rights and are all treated equally, there is still the problem of ignorance. Many people, particularly in the lower-income groups, do not know their rights and/or are afraid to claim them when they are not respected. Not infrequently there are certain law enforcement bodies which tend to think that it is better this way because if all the rights of all the citizens were always and in every situation respected, it would paralyse the maintenance of law and order. Whatever the merits of this argument, it can have no force where an uneducated or unsophisticated person is placed on trial for his life. Here, at all stages his rights need protection and support.

67. It may not be enough to prohibit the use of violence in the interrogation of the accused, as do a very large majority of States. Administrative checks are required to inhibit any such proclivities amongst the investigators.

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68. No consideration of the law in actual practice would be complete without reference to the many factors of public life which impinge upon the law and threaten its impartiality. Political action, the influence of the mass media and the effect of public opinion can never be overestimated. The public often exhibits an inordinate interest in trials for capital offences. Conversely, the influence of public opinion has sometimes mitigated harsh laws, showing a more humane image than that of the official justice. 26/

69. Another problem encountered in most countries is the financial aspect of the defence. The value of the defence counsel is too often in proportion to its cost in the countries where one has to pay for the defence.

70. Finally, the defences available to a person likely to be sentenced to death and the facilities accorded to him to protect his rights need to be widely propagated; few countries provide for this. 27/

71. These are some of the different factors that can make the application of the death penalty very questionable and sometimes very unfair. Considering that a human life is at stake, there should be no need to emphasize their importance. The injustice, the inconsistency or unfairness not of the law but of the conditions for its application has always been a major argument for the abolition of the death penalty. In fact when the United States Supreme Court banned capital punishment, it was on this ground. 28/

Information on progress of report on legal safeguards
to be submitted to the General Assembly

72. A special report on "practices and statutory rules which may govern the right of a person sentenced to capital punishment to petition for pardon commutation or reprieve" was requested by the General Assembly in its resolution 2857 (XXVI). The Assembly in November 1972 asked the Secretary-General to inform the Council on the progress made in collecting that information (resolution 3011 (XXVII)). An appreciable number of Member States have replied to the queries of the Secretary-General since 1969 but due to the relative paucity of substance of most of the replies, this work will require further research. The social defence national correspondents have received questionnaires

26/ One may recall that in eighteenth century England, when people could be condemned to death for the most insignificant theft, the people were unwilling to report the cases and the juries would consider the thief not guilty, so much so that petitions were signed by businessmen which forced the justice to abolish capital punishment for these offences and put milder ones so that the offenders would not go unpunished.

27/ This information may be propagated under an educational form as in a number of socialist countries, among which is the USSR.

28/ United States of America, Supreme Court, Furman vs. Georgia (29 June 1972). The Court held that because of the arbitrariness of its application, the death penalty was an "unusual" and "cruel" punishment and therefore violated the eighth and fourteenth amendments to the United States Constitution.

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and a few replies have been received from them. More extensive requests for information will have to be sent to the Member States. The additional work will probably require one more year.

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IV. CONCLUSION

73. Since the intention of the General Assembly embodied in resolution 3011 (XXVII) is to promote abolition, it would seem that there is still much more to be done. Opinion polls made in abolitionist countries as well as retentionist countries show a majority of people favouring capital punishment. It is also evident that on a world scale, Governments are inclined to favour the maintenance of this penalty.

74. The death penalty is always used when a particular problem seems to grow out of proportion and frightens public opinion or when a political opposition has to be crushed. It has been used in a number of countries to fight armed robbery or to respond to a crime wave; it is applied in some socialist countries against economic crimes; other countries have had recourse to the death penalty to fight the recent growth in drug trafficking, or to punish hijackers of aircraft after incidents which have outraged public opinion. States seeking to protect themselves against freedom-fighters and others trying to control terrorism are also likely to favour the death penalty.

75. In the industrialized world, the move appears to be more towards a reduction of condemnations and executions than towards the eradication of capital punishment from the penal code. Progress towards abolition, where it appears, is to be found in practice rather than law, that is, in the application of the law rather than in statutory exclusion. Some courts are more and more reluctant to impose the death penalty and even more hesitant about actually carrying out executions. But this must not be taken as a general rule, for even this practical shift towards clemency is not nearly as widespread as might at first appear.

76. The impression of a steadily abolitionist evolution is due to the importance given to trends in a few larger countries which happen to be in the spotlight of world politics, and which have joined in recent years the abolitionist group. Meanwhile, many countries have made no progress at all towards the abolition of the death penalty. Indeed, in some cases, they have been using it more widely and have been using harsher methods to put the condemned to death.

Tasks for the future

77. The States Members of the United Nations have decided that abolition must be the right direction for human society to take though they do not say when. All the arguments for and against will presumably continue in the intervening period. The need now is for more studies than those carried out so far - and for studies in cultures more widely diversified than those carried out to date. A tendency to use or not to use capital punishment needs to be understood not in the judgemental sense of other nations but in the context of a country's own problems so that the difficulties feared as a result of its abolition - or the real issues involved in its abolition - are better understood. Despite the information supplied by Member States for this report, more data are required.

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78. The use of the death penalty is not yet monitored by the United Nations in such a way as to allow the general trends to be followed. There is as yet no necessary notification of executions and the collection of comparative material requires the development of a type of questionnaire necessary not only for comparisons but for a flow of more precise data on trends and safeguards. Only at the meeting of the Consultative Group on the Prevention of Crime and the Treatment of Offenders (held at Geneva in 1968) was the death penalty fully discussed by a large United Nations group.

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Annex I

STATES MEMBERS OF THE UNITED NATIONS AND CAPITAL PUNISHMENT

Table 1 lists the Member States and their policies on capital punishment. Those which are "abolitionist by law" are countries whose laws do not provide the death penalty. "Abolitionist by law for ordinary crimes only" are countries whose laws provide the death penalty only for exceptional crimes and/or under exceptional circumstances. "Abolitionist by custom" are countries which, although their laws provide the death penalty for ordinary crimes, have not executed those sentenced to death, or have not sentenced anyone to death, for at least the past 40 years. a/ "Retentionist" countries are those which impose capital punishment for ordinary crimes (such as murder, rape, theft etc.). Finally, some federated nations may be divided on the issue, some States being abolitionist while others are retentionist; such is the case in Mexico.

a/ Many new nations which have capital punishment in their laws have never executed any sentenced persons, but since most of these States have less than 20 years of existence, it is difficult to evaluate if this is really due to a conscious policy.

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Table 1. States Members of the United Nations
and capital punishment

- A - Abolitionist by law
AO - Abolitionist by law for ordinary crimes only
AC - Abolitionist by custom
R - Retentionist
D - Country divided on the issue (some States are
abolitionist, others retentionist)

AFGHANISTAN	AO	ECUADOR	A
ALBANIA <u>a/</u>	R	EGYPT	R
ALGERIA <u>a/</u>	R	EL SALVADOR	R
ARGENTINA	R	EQUATORIAL GUINEA <u>a/</u>	R
AUSTRALIA	D	ETHIOPIA <u>a/</u>	R
AUSTRIA	A	FIJI	R
BAHRAIN	R	FINLAND	A
BARBADOS	R	FRANCE	R
BELGIUM	AC	GABON <u>a/</u>	R
BHUTAN	R	GAMBIA	R
BOLIVIA <u>a/</u>	R	GHANA	R
BOTSWANA <u>a/</u>	R	GREECE	R
BRAZIL	AO	GUATEMALA	R
BULGARIA	R	GUINEA <u>a/</u>	R
BURMA	R	GUYANA <u>a/</u>	R
BURUNDI <u>a/</u>	R	HAITI <u>a/</u>	R
BYELORUSSIAN SSR <u>a/</u>	R	HONDURAS	R
CAMEROON	R	HUNGARY	R
CANADA <u>b/</u>		ICELAND	A
CENTRAL AFRICAN REPUBLIC	R	INDIA	R
CHAD	R	INDONESIA	R
CHILE	R	IRAN	R
CHINA <u>a/</u>	R	IRAQ	R
COLOMBIA	A	IRELAND	R
CONGO <u>a/</u>	R	ISRAEL	AO
COSTA RICA	A	ITALY	AO
CUBA <u>a/</u>	R	IVORY COAST	R
CYPRUS	R	JAMAICA	R
CZECHOSLOVAKIA	R	JAPAN	R
DAHOMEY	R	JORDAN	R
DEMOCRATIC YEMEN <u>a/</u>	R	KENYA	R
DENMARK	AO	KHMER REPUBLIC	R
DOMINICAN REPUBLIC	A	KUWAIT	R

(Table continued on following page)

/...

Table 1 (continued)

LAOS	R	ROMANIA	R
LEBANON	R	RWANDA	R
LESOTHO <u>a/</u>	R	SAUDI ARABIA <u>a/</u>	R
LIBERIA	R	SENEGAL <u>a/</u>	R
LIBYAN ARAB REPUBLIC	R	SIERRA LEONE	R
LUXEMBOURG	AC	SINGAPORE	R
MADAGASCAR	R	SOMALIA	R
MALAWI	R	SOUTH AFRICA	R
MALAYSIA	R	SPAIN	R
MALDIVES	R	SRI LANKA	R
MALI <u>a/</u>	R	SUDAN	R
MALTA	AO	SWAZILAND	R
MAURITANIA <u>a/</u>	R	SWEDEN	AO
MAURITIUS	R	SYRIAN ARAB REPUBLIC	R
MEXICO	D	THAILAND	R
MONGOLIA <u>a/</u>	R	TOGO	R
MOROCCO	R	TRINIDAD AND TOBAGO	R
NEPAL <u>a/</u>	AO	TUNISIA	R
NETHERLANDS	AO	TURKEY	R
NEW ZEALAND	AO	UGANDA	R
NICARAGUA	AC	UKRAINIAN SSR	R
NIGER	R	USSR	R
NIGERIA	R	UNITED ARAB EMIRATES <u>a/</u>	R
NORWAY	AO	UNITED KINGDOM	AO
OMAN <u>a/</u>	R	UNITED REP. OF TANZANIA	R
PAKISTAN	R	UNITED STATES OF AMERICA <u>b/</u>	D
PANAMA	AO	UPPER VOLTA	R
PARAGUAY <u>a/</u>	R	URUGUAY	A
PERU	AO	VENEZUELA	A
PHILIPPINES	R	YEMEN	R
POLAND	R	YUGOSLAVIA	R
PORTUGAL	AO	ZAIRE <u>a/</u>	R
QATAR <u>a/</u>	R	ZAMBIA	R

a/ The information concerning this Member State does not come from an official reply to the United Nations or a former United Nations publication.

b/ See paragraph 36 of the main report.

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Table 2. States Members of the United Nations abolitionist by law
(totally or for ordinary crimes only)

1863	Venezuela
1867	Portugal
1870	Netherlands
1882	Costa Rica
1890	Brazil
1897	Ecuador
1903	Panama
1905	Norway
1907	Uruguay
1910	Colombia
1921	Sweden
1924	Dominican Republic
1928	Iceland
1930	Denmark
1931	Nepal
1944	Italy
1945	Austria
1949	Finland
1954	Israel
1961	New Zealand
1969	United Kingdom
1971	Malta
1971	Peru

Also: Australia, two abolitionist states out of six.

Mexico, 29 abolitionist states and territories out of 32.

United States of America, 13 abolitionist states out of 50.

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Annex IIARTICLES OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS
RELEVANT TO CAPITAL PUNISHMENT

Article 3. Everyone has the right to life, liberty and security of person.

Article 5. No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

Articles relevant to the legal safeguards for the accused

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence; (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.



UNITED NATIONS

SECRETARIAT

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17 November 1972
ENGLISH
ORIGINAL: ENGLISH/SPANISH

CAPITAL PUNISHMENT

Information from Governments compiled by the United Nations
SecretariatAddendum

INFORMATION RECEIVED FROM GOVERNMENTS

Bahrain

/Original: English/

/14 September 1972/

The Bahrain Penal Code of 1955 provides for the application of capital punishment in the following cases:

1. Premeditated murder;
2. Treason;
3. Piracy;
4. Military action against the Head of the State or his Government.

However, the above law provides for the substitution of capital punishment by life imprisonment in the following cases:

- (a) Where the person convicted of the capital punishment is less than 18 years old;
- (b) Where the person convicted of the capital punishment is a pregnant woman.

Moreover, in all cases capital punishment cannot be executed without first obtaining the assent of the Head of the State on the said conviction.

While the Bahraini legislative authorities have not yet debated the question of the possibility of abolishing capital punishment, they would, however, give a greater thought and consideration, in the future, to the recommendation provided in paragraph 3 of the above-mentioned resolution /General Assembly resolution 2857 (XXVI)/, which provides for restricting "the number of offences for which punishment may be imposed".

72-23115

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ST/SOA/118/Add.1
English
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Honduras

/Original: Spanish/

/27 October 1972/

La República de Honduras, fiel intérprete de la Declaración Universal de los Derechos Humanos, garantiza la inviolabilidad de la vida, sin que por ninguna autoridad pueda establecerse ni aplicarse la pena de muerte. El derecho de defensa es inviolable, y todo ciudadano tiene las garantías establecidas por la Carta Magna, de interponer todos los recursos estipulados por la ley. Toda persona acusada de delito tiene derecho a que no se prejuzgue su responsabilidad, considerándose como inocente mientras no se pruebe lo contrario. Ninguna persona puede ser presa o detenida sino en los lugares que determina la ley; y se prohíbe absolutamente la fustigación y toda clase de tormentos.

Malawi

/Original: English/

/9 November 1972/

/Additional reply/

The Malawi Government has studied resolution 1574 (L), adopted by the Economic and Social Council at its fiftieth session, and clarifies its position as follows:

- (a) The continued retention of the death penalty is considered by the Government of Malawi as necessary for the proper maintenance of law and order in Malawi and, in particular, for the deterrence of those who might otherwise commit the very serious crimes which still attract that punishment;
- (b) The Government of Malawi has, at present, no plans for either the total abolition of the death penalty or for future restriction upon its use;
- (c) There have been no changes in this respect since 1965.

Malta

/Original: English/

/8 November 1971/

/Second additional
reply/

The Bill to abolish capital punishment, to which reference was made in the Note of 16 September 1971 /from the Permanent Mission of Malta to the United

/...

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Nations⁷, has since been passed by the Parliament of Malta with significant amendments. The amendments in question withdrew the exceptions mentioned in the Act of 16 September 1971 and the Act now provides for the abolition of the death penalty and its complete erasure from the Criminal Code. The death penalty is now only retained in the Malta Armed Forces Act, 1970, and is applicable only to persons subject to military law for offences involving aid to the enemy.

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UNITED NATIONS

SECRETARIAT

Distr.
GENERALST/SOA/118/Add.2
6 February 1973

ORIGINAL: ENGLISH/FRENCH

CAPITAL PUNISHMENT

Information from Governments compiled by the
United Nations SecretariatAddendumINFORMATION RECEIVED FROM GOVERNMENTS (continued)Czechoslovakia/Original: English//6 December 1972/

1. (a) Criminal proceedings against an offender accused of a penal act for which the Penal Code in its Special Part prescribes death penalty are of an ordinary character and are conducted, as provided by the Code of Penal Procedure, in the same manner as against offenders who committed other criminal acts. The perpetrator of a crime punishable by death penalty thus enjoys the same rights and guarantees as those accorded under the Code of Penal Procedure to any other offender.

Under section 36, paragraph 3, of the Code of Penal Procedure, the accused in penal proceedings concerning an act punishable by death penalty must have counsel already in the preparatory proceedings regardless of his property situation. If the accused does not make use of the right to choose his counsel, a counsel is appointed for him. If the accused is sentenced to death penalty, his right to submit an appeal or a petition for pardon is not limited in any way in comparison to other convicts.

All judgements imposing the death penalty shall be reviewed by the Supreme Court of the Czechoslovak Socialist Republic from the point of view of the legality of the judgement and the proceedings which had preceded it. If it finds that the law was violated in a manner which could have affected the imposition of the death penalty, it shall proceed as if a complaint against violation of the law had been filed, i.e., in its decision it shall pronounce that the law had been violated and that the judgement imposing the death penalty, or the proceedings preceding it, are cancelled and that it orders new proceedings.

The death penalty may be executed only if the judgement has been unaffected by the review carried out by the Supreme Court of the Czechoslovak Socialist Republic and the court has been advised that there has been no petition for pardon or that such petition has been rejected.

73-02795

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(b) Although there is no provision in the Czechoslovak legal regulations regarding the time limit within which the death penalty could be executed, there in fact exists time difference between the date on which the judgement becomes effective and the date of the execution of the death penalty. This is given by the period of time which is necessary for the review by the Supreme Court of the Czechoslovak Socialist Republic of the judgement imposing the death penalty, as stated in paragraph (a) of this information. Since the application of the existing legal guarantees always requires a certain period of time, we do not regard as necessary and purposeful to prescribe a time limit before the expiry of which the death penalty could not be executed.

2. The death penalty is expressly defined by the law as an extraordinary penalty. Possibilities for its imposition are very limited. Its imposition is possible only in respect of crimes for which the Penal Code allows the death penalty and only in cases where the degree of danger of such crime to the society is too high, where the imposition of the penalty is required for the effective protection of the society, or if there is no hope that the offender can be educationally affected by another penalty. There are 29 criminal acts for which the death penalty can be imposed. From these, 13 are military crimes for which the imposition of the death penalty comes into consideration mainly under the condition that they were committed in a state of defence emergency or in battle. In four cases they are the crimes against humanity.

The number of crimes committed in times of peace for which the death penalty can be imposed is very small. Its imposition comes quite rarely and practically only in cases of brutal murders. The Penal Code does not prescribe for any of the crimes capital punishment as the only penalty so that the court can choose between the death penalty or a long-term imprisonment.

The death penalty may in no case be imposed on a pregnant woman or a juvenile, that is a person who was not older than 18 years when he committed the crime.

Finland

/Original: English/

/18 January 1973/

Additional reply

A declaration given in 1826 de facto abolished the execution of capital punishment in Finland. Since then, death sentences have not been executed in peace time. By an Act on the deletion of capital punishment from the penal system No. 343/72, of 5 May 1972, which came into force on 1 June 1972, the death penalty was deleted from the Finnish legislation concerning both peace and war-time and substituted by the penalty of hard labour for life.

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Tunisia

/Original: French/

/27 November 1972/

Le Code de procédure pénal tunisien accorde dans les différentes phases de la procédure, des garanties aux accusés d'un crime passible de la peine capitale. C'est ainsi que lors d'une première comparution, le juge d'instruction doit, après avoir constaté l'identité de l'inculpé, lui faire connaître les faits qui lui sont imputés ainsi que les textes de loi applicables à ces faits, et recevoir ses déclarations (art. 69 du Code précité).

De même, le juge d'instruction doit donner avis à l'inculpé (garantie capitale) de son droit de choisir un conseil parmi les avocats inscrits au tableau ou admis en stage. A défaut de choix, un conseil doit lui être désigné d'office. La désignation est faite par le Président du Tribunal (art. 69).

L'inculpé peut également communiquer librement avec son Conseil dès après la première comparution (art. 70).

En outre, tout inculpé de crime ne peut être renvoyé devant le tribunal criminel que par la chambre d'accusation qui est une juridiction d'instruction de second degré. C'est en effet l'arrêt de renvoi de ladite juridiction qui fait de l'inculpé un "accusé" (art. 119). Devant la Cour criminelle, l'assistance de l'avocat est également obligatoire. Si l'accusé ne choisit pas un avocat, le Président lui en désigne un d'office (art. 141).

Si en principe, les jugements sont rendus à la majorité des voix, la condamnation à la peine capitale ou aux travaux forcés à perpétuité est, aux termes de l'article 162, prononcée par quatre voix au moins. Il est à noter que la Cour criminelle se compose de cinq magistrats, le président compris.

Le Code précité prévoit également qu'aucun individu condamné à mort ne peut être privé du droit de former un recours devant une instance judiciaire supérieure ou de demander sa grâce. En effet, d'après les articles 258 - 261 - 162 et 163, tout condamné à mort peut se pourvoir en cassation dans un délai de cinq jours à dater de la décision contradictoire. Le pourvoi est formé par simple requête. Il est jugé par ladite Cour toutes affaires cessantes.

Le condamné à mort est dispensé de la consignation de l'amende à laquelle il serait condamné si sa requête était rejetée.

Quant au droit de grâce, l'article 342 dispose que lorsque la peine prononcée est la mort, la décision dès qu'elle est devenue définitive est portée à la connaissance du Ministre de la justice qui la soumet au Président de la République pour l'exercice de son droit de grâce. La condamnation ne peut être mise en exécution que lorsque la grâce a été refusée.

Il convient également de signaler qu'en matière d'exécution, le Code pénal tunisien prévoit dans son article 9 que la femme condamnée à mort, qui est reconnue enceinte ne subit sa peine qu'après délivrance.

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Enfin, s'agissant de l'abolition de la peine capitale, il ne paraît pas possible, en l'état actuel de la législation tunisienne, de consacrer un tel principe. Toutefois, la Tunisie ne manquera pas d'étudier avec attention les propositions et suggestions qui seront faites par les Nations Unies à ce sujet.

Zambia

/201. 231: English/

1972/

A...

(i) A person condemned to death in Zambia is not deprived of the right to appeal to the Court of Appeal and whether a condemned person petitions for pardon or not, a death warrant is not signed by His Excellency the President unless the Advisory Committee on the Prerogative of Mercy has met, reviewed the case and made recommendations to His Excellency the President as to whether a person should be hanged or not.

(ii) A death sentence in Zambia is not carried out unless the procedures of appeal and a review by the Advisory Committee on the Prerogative of Mercy have been terminated.

The procedure is as follows:

(a) At the trial of a person for a capital offence, such person must be legally represented and is always legally represented.

(b) If the prisoner is sentenced to death by the High Court, he always appeals to the Court of Appeals, and the appeal is presented by a legal representative.

(c) If the Court of Appeal dismisses the appeal and confirms the death sentence, then automatically the Advisory Committee on the Prerogative of Mercy under section 55 (4) of the Constitution of Zambia, reviews the whole case and advises His Excellency the President whether the death warrant should be signed or not, and whether the prisoner should be granted a pardon or reprieve.

(iii) No person may be tried on a charge of murder or manslaughter without legal representation.

B. In Zambia there are adequate legal procedures and safeguards, so that fixing a time-limit before the expiry of which the death sentence should be carried out would serve no useful purpose.

It is not intended to restrict the use of the death penalty or to abolish it, and no changes have taken place in this direction since 1965.

/...

[NBC News, Air Date: Friday, July 28, 1972, 9:30 p.m. e.s.t.]

"THOU SHALT NOT KILL"

(Produced and written by Peter Jeffries)

REEL I

[Video] "NBC News Presents."

[Audio] FX. Prison sounds.

[Video] Title: (zoom in) "Thou Shalt Not Kill."

[Audio] FX. Footsteps.

[Video] Frame: "NBC News Correspondent Carl Stern."

[Audio] FX. Prison sounds.

[Video] 'Copter shot moving over ridge.

[Audio] FX. 'Copter, establish then under.

STERN [voice over]. On June 29, 1972, the Supreme Court of the United States ruled that 600 men and women on Death Row may not be executed. This program is about two of them. Some parents may prefer that their children *not* watch it.

FX. 'Copter noise up then under.

[Video] 'Copter shot moving in to prison. Super "Utah State Prison." Super out. Continue 'Copter shot right into prison block.

[Audio] LANCE [voice over]. We had a lot of thoughts of just grabbing the Thompson submachine guns, just stick 'em out of the window, some people come out of the show house or something like that and just cut loose.

KELBACH [voice over]. I'd still like to take a doggonned tank down State Street and just cut loose with a 50-caliber on top and just let it go.

[Video] Lance and Kelbach on camera being interviewed.

[Audio] *Question [on camera]. Why?*

KELBACH [on camera]. I don't know . . .

It just seems like something that would be different, something that would be fun. You could see people scattering all over, windows breaking, people just falling down, blood running all over. It would be exciting.

[Video] CU Lance.

[Audio] STERN [voice over]. Myron Lance, age 31, is the one with the shaved head . . .

[Video] CU Kelbach.

[Audio] STERN. And this is his partner, Walter Kelbach, age 34.

[Video] Super "Carl Stern, NBC News, Law Correspondent" super out.

[Audio] STERN [on camera]. In five days, just before Christmas 1966, they killed six people in Salt Lake City . . . not with tanks and submachine guns . . . but with a knife and a pistol.

They were captured, tried, convicted and sentenced to death.

[Video] Exteriors Supreme Court.

[Audio] STERN. On June 29th the Supreme Court struck down the death penalty for Lance and Kelbach and 598 other persons awaiting execution in 32 states.

[Video] Interior of Supreme Court pull back to expose.

[Audio] STERN. The Court ruled that the death penalty is so infrequently and randomly imposed that it has become "cruel and unusual punishment" prohibited by the Constitution.

What it means, apparently, is that the states where capital punishment was permitted either will have to eliminate executions entirely or devise new laws for special categories of heinous crimes in which the death penalty will always and automatically be imposed.

[Video] Stern on camera.

[Audio] STERN [on camera]. That possibility is being examined by the Federal Government at the instruction of President Nixon. It will also preoccupy many of the state legislators in the next year.

Lance and Kelbach committed not one murder but six . . . at different times . . . deliberately and with no regret. Although they cannot now be executed, no case could be better suited for study by the lawmakers than theirs, and that is why we are presenting it tonight.

What you are about to see is an interview with Lance and Kelbach filmed by television station KUTV in Salt Lake City. NBC News obtained the film, added some of its own and edited all of it into a one-hour program.

We are showing it now because the issue of capital punishment has never been so urgently and widely debated.

The interview is also a "first" in broadcast journalism. Nothing quite like it has been seen before a mass audience. Only television can tell this kind of story because it brings you, the audience, face to face with two murderers.

In December 1966 Lance and Kelbach were out of Utah State Prison on parole. Both had served terms for petty thievery.

On Saturday, December 17, Lance went to Kelbach's room at the Holiday Motel in Salt Lake City. Kelbach had a large supply of pills—Nembutal and Methadrine.

They took these with beer—lots of both. The pair also had a starter pistol and a very sharp knife.

[Video] Several shots of Stephen Shea's body and gas station.

[Audio] STERN. The night would end in the murder of 18-year-old Stephen Shea, a gas station attendant. He had taken the job ten days earlier to earn extra money for Christmas.

[Video] Two-shot of Lance and Kelbach.

[Audio] STERN. Two years later on Death Row Lance and Kelbach talked about the killing.

KELBACH. We were riding around up in Kearns and we went past this place where I had bought a new home in '63 and sold it, and we noticed this one filling station on the corner with this lone attendant, and we pulled in there and there was this—and while we were in there we went to the rest room, and then I drove around to the front of the pumps and had him put in some oil and fill 'er up with gasoline and we both went in the station.

While we are in the station, and that, and I was supposed to get ready to pay the man, a truck pulled in and, uh, Lance went out and waited on them and took care of them. And when he come back in he took the starter pistol that we had picked up during our ride.

So we went in and we put the starter pistol into the guy's ribs, and then he opened up the cash register and Lance took all the money out, put it in his pocket. He had the starter pistol, was watchin' the guy. I was watchin' out front to make sure if any cops were coming by, and uh, which is—they ain't usually one around when you need 'em anyway.

And so we turned around . . . we decided, well, we'd better take him with us. So we took him into the car with us and just drove out. We left the station open.

Question. Where did you put him in the car? The back seat?

KELBACH. The back seat. Well, no, it was a station wagon. He had this Mercury station wagon, so he put him in the seat behind the driver and we were both in front and he sat kitty-corner on the seat and watched him and that with the gun.

We had the guy take off all his clothes so that he would hesitate in jumping out of the car. Not because for any other reason, just to hesitate. We were gonna take him out onto the desert and leave him. We had no intentions of killing him or anything else, just delaying gettin' caught.

So when on the way out we gets—makes the turnoff going out towards Win-dover there where we were gonna go out to the desert, we were drinking beer and we took some more pills and then we even offered the kid a beer and cigarettes if he wanted it. We were humane.

And we got out to Tippy's Point. All of a sudden one of us just says, "Well, let's flip a coin and see who does it, so we don't get caught." So we flipped a coin and it came up that I lost, and I always take tails and he takes heads.

LANCE. I know before we flipped the coin we been more or less half joking that we would make up our minds later whether we's gonna kill him or let him go. All we's really doing was just trying to scare the guy, and pretty soon it ended up to where we really meant it.

Question. Didn't you have these discussions in front of the service station attendant while you were driving out?

LANCE. Yeah. That's while we's driving.

KELBACH. We flipped the coin right in front of him, too.

Question. What were you saying at that point? Do you remember?

LANCE. Heads, you do it; tails, I do it—somethin' like that. He said somethin' about "Do what?"—You know. And Kelbach says "Well bump you off, of course," something similar to that.

Question. So you lost the flip.

KELBACH. Yeah, I lost, so I did it. Simple . . . easy . . . 'cause all's it is is just when you put it in. I don't know if you ever cut foam rubber or cut your skin with a razor blade. Once you get through the little skin and the little layer there that's there as a protective shield there's nuttin' but just a bunch of blood and intestines—they're soft . . . it's just like you take your veins and that . . . it's just like boiled spaghetti. It's just soft, easy, and with a good sharp knife it does nothing in that. In fact, if in the height of excitement if you were using one on somebody the person probably wouldn't even know it until they happen to look at it right off the bat. Smooth, efficient. It leaves no ballistics. And if you take care of it right, it won't leave anything that the police can use.

Question. Well, you didn't actually know who won the toss out there. You just wanted to demonstrate some of the knowledge you'd gained in the prison hospital on anatomy?

KELBACH. Well, not particularly. I just utilized it, you know, It just came naturally, after. It's just one of those things that comes naturally.

So we got up to Tippy Point and made him get out of the car—lie on the ground—and that's when I inserted into his spine, both of his lungs, his heart and his intestinal tract.

He was laying on his back, but then after the first three wounds he rolled over onto his side where I just reached around and got him and then I turned the knife around and made another incision so that it looked like a two-sided knife and that. Because these little technicalities . . . I did it half out of just a reaction to make sure I had it in the right spot and plus the fact just to make sure.

Question. This kid say anything when you were stabbing him?

KELBACH. He says, "Oh my God, I got a wife." That was his dying words. It was in a phrase like "Oh my God, I got a wife!"—something similar to that. And uh—

LANCE. At the time we thought it was kind of funny, really, because, well, everything we was really doing at the time we thought was funny. Every action or move you'd make, it seemed really funny to us. And I think one of us even commented on "Did you see the way he squirmed? Wasn't that funny?"

And, oh, I don't know, everything we done all through this whole time seemed funny or exciting or different. I'll grant you it was different.

[End reel I.]

REEL II

[Video] Stern on camera.

[Audio] STERN [on camera]. The police discovered Stephen Shea's body on Sunday morning, December 18th. That night they patrolled the city in squad cars and jeeps, keeping a careful watch on all gas stations.

[Video] Newsfilm of Holtz Body.

[Audio] STERN. Yet, 18-year-old-Michael Holtz, another gas station attendant, became the second victim.

The killers knew where to get information on how the hunt was going.

KELBACH. So I went across to the Holiday Inn and that—which is where I usually went when I was doing something wrong because the police and everything had their coffee there. It's just like a terminal for 'em and you can hear anything you wanta know—how they're doing on any case—and they were discussing different parts of what they were doing, how they had their road blocks set up and so on and so forth. And you can pretty well see if you got any heat on you or not.

Question. You still taking pills all this time?

KELBACH. Yes, all this time we're taking—

LANCE. We're taking pills approximately every two and a half, maybe three hours. Sometimes—

KELBACH. Four or six. Whenever you think of it. And then just like candy.

LANCE. And there's always a case of beer, if not two cases of beer, in the back seat. A six-pack between us. When we come back from Salt Lake we emptied the back of the car and filled two standard size garbage cans completely full of beer cans.

KELBACH. So, don't know exactly what we did when we come back, but we were back and went riding around in Salt Lake.

LANCE. We went to the East Side to find a place to pull a job, and we pull

in one service station, like he said, and was looking it over and really had intentions of holding the place up but there's this jeep that kept—we'd pull up and a few minutes later we'd see a jeep go by so we'd pull away 'cause the jeep'd slow down like it was gonna pull in. Well, we'd take off and it'd take off. We tried that I guess about four different times at that one service station and, uh, finally just give up the idea on that particular station.

KELBACH. So, we went down and we knew this one place that was close to Lance's where there was only one attendant.

LANCE. And about six blocks away.

KELBACH. So we pulled in there and used the same operation: Lance went in, I opened up the back door of the car, stayed out in the car with the car running, keeping eye, and Lance went in, got the money and the attendant with his starter pistol, brought him out and we used the same procedure.

We started off. We made him get undressed so that he'd be less apt to run off, and on the way out we gave him a beer which he accepted and he drank a beer and smoked a cigarette. And then we told him not to be nervous and stuff like that, and we were heading out towards Coleville 'cause of that lake. We could always plant the body—the body in the lake there.

Well, we got part way there and we got tired so we pulled up on this overpass—I don't know the name of it anymore. We got out of the car . . . he got out of the car and Lance made him lie down.

LANCE. Yeah, and uh, he was laying half on his back but yet more of his side—and he just looked at yuh. He never said a word.

Question. Did he talk to you in the car at all going up?

LANCE. No. The only time he ever said anything was when someone asked him a question. He would answer. Other than that he—he never said a word.

And—and I knelt down by him then, slidin' all over in the snow. I damned near—I damned near stabbed him once accidentally, slidin' down, trying to grab a way to keep from going down into the barpit, and I finally climbed back up by him.

And so I got him in the—in the—right here next to the heart. I guess it went through from what I heard.

KELBACH. I was leaning against the back of the car with my arm up like this, you know, above the window of the station wagon, a beer in this hand, see, and I just tell Lance—well, he'd be standing there and he had seen where I did it so he was approximate to location. Then all's I did is just point out to him different spots. I'd tell him, "Well, a little bit over and down," and that's what he did.

He already had markings in the same similar area as the one out at Tippy Point. There wasn't, oh, I'd say, in all told, with all—both bodies—there wasn't ten inches all told in variation between all of 'em, and so he wasn't gonna go anywhere, anyway.

So—I kinda helped him along—instructed him a little bit.

And that's when this truck that looks like one of these Wycoff mail trucks, and exactly the same big-van type and everything, come up on top and its headlights shone right down on us and there was no mistakin' to the fact he seen what was happen'.

So we quick jumped in the car and we took off because we figured it was a mail truck and that he would radio ahead to the police, and so we took off and threw the stuff—the guy's clothes—out the window of the car and we came on back into Salt Lake.

I don't know how the driver of that truck ever missed reportin' that. Beats the heck outta me. He had a clear view.

[Video] Stern on camera.

[Audio] STERN [on camera]. After they left, the truck driver drove up to the site, stepped out of the cab—his footprint was found in the snow—examined the corpse, and then drove off. To this day the police do not know who he was . . . just somebody who saw a murder and didn't want to get involved.

[End reel II.]

REEL III

[Video] Stern on camera.

[Audio] STERN [on camera]. No murder is a pretty story, but the story of Lance and Kelbach seems more sordid than most.

If there are extremes in murder, then the murders by Lance and Kelbach are extreme. That is why we're presenting their story. It is cases like theirs—

cold-blooded, multiple murders without remorse—that will confront the law-makers. They will have to decide whether to let capital punishment be abandoned or whether certain murders are so extreme that the death penalty should be automatically and uniformly imposed.

[Video] CU Stern.

[Audio] STERN. Their second victim was discovered and reported Monday morning. Police had no clues. Ferris Andrus, the Chief Deputy Sheriff, believed he had no hope of catching the murderers until they killed again and he hoped, this time, they would leave a clue.

By Wednesday Lance and Kelbach had obtained a ten-shot, 38-caliber pistol.

[Video] Shots of cab and Strong's body.

[Audio] STERN. That night . . . three days before Christmas Eve . . . a 30-year-old cab driver, Grant Creed Strong, became the third man they killed.

KELBACH. This was the night when we started out on a cab driver.

Question. Did you check a couple places before you got to the cabs?

LANCE. Uh, yeah. In fact, uh, that's where we checked, uh—what is it?—uh . . .

Question. At Seven-Eleven, wasn't it?

LANCE. Yeah, we checked the Seven-Eleven. We checked another one in—uh—it was further in Grange.

KELBACH. Yeah, and we checked it, Day and Night, right by the police station.

LANCE. Gee, yeah. Right across from the Metropolitan Hall of Justice. We pulled in there and the gun would only hold, I think it was ten—ten rounds and it seemed like all the time there was 13 people in there, so we—if there was any trouble started (no thanks) there was nothing really we could do except—we couldn't see any sense in leaving any witnesses now that we's already in trouble, so we's just gonna get rid of them if we had, you know, instead of taking a chance of getting busted.

So considering there was more people in it all the time than what I had rounds in the gun, well, we decided to let that Day-Night market alone.

We's driving and a couple cabs passed us and, I don't know, one of us says, "Well, why not hit a cab?" I said, "They've usually got pretty good money."

And Kelbach says, "No," uh, he says, "they ain't got much money."

I said, "Well, there's a couple guys out in state prison for cab robbing that did get pretty good money, see."

And he says, "All right."

So he pulls up and lets me off on the corner of, I don't remember exactly where—somewhere right in the center of Salt Lake—and he says, "Well, don't get in the cab 'til I come around the block so I can tell which cab you get in, see."

So the first time he comes around the block I can't get in the cab because there's a police paddy wagon sittin' there, see, and I really could have, I guess, but I just thought they were watching me when they really wasn't.

And—so he makes another trip around and I hadn't even seen him passed. You know, I didn't know he'd even passed me, and I thought he was still behind me waitin' to see if I got in. And before I got in I took a coupla more pills and drove off and in the meantime Kelbach was comin' around and he'd missed me.

Question. What did you think when you missed him?

KELBACH. Well, I figured, "Well, I know where he's headed," because our rendezvous was the same parking lot out there by the airport, and then—so I knew where he was headed.

But contrary to this the cab had gone to the cab company and I didn't know this and so I'm going down, just going along at a moderate rate of speed because I figure—well I can't see nobody ahead of me, I can't see nuttin' behind me and there's a cab comes out ahead of me and I thought "was that him?" No, that wasn't him—he turned off in another direction—so I just kept a-goin' at a steady pace.

LANCE. In the meantime, when this cab pulls into the cab company I got all shook up, you know. I was all excited and I says, "Hey, what—hey what are you pulling in here for?" I'm paranoid, I guess you might say. I'm—I'm scared. And, uh, he said, "Well, I've gotta check in on something. I got to sign a receipt for something."

In the meantime, what he was really doing was he's turning his money in.

He was expectin' a—a robbery of some kind and he had set up a signal that if he was to click the microphone five or six times that was—that meant that a robbery was in possession and to get out there and give him a hand. But I didn't know this at the time. I found out later.

And I glanced up and I seen—I knew it was my Mercury because it had my sticker in the back. I never had plates on it. And I thought, "Well, how the hell'd he get up in front of me?" He's supposed—Is mad 'cause he's supposed to have followed me.

KELBACH. And I'm mad. I dont even know where he is. And I didn't know where he was until I pulled in the parking lot and he pulled in behind me and his cab driver tried to block my—I had left plenty of room in case of an emergency in the front of the car, but this cab driver pulled right up in back of me and I couldn't maneuver very good then, see?

LANCE. So I could see that he was gonna be blocked in to where he couldn't get out and there was all kinds of cars up there parked, watching the planes come in and landing, so I'd pulled the gun on him just before we'd pulled in and told him it was a holdup, you know.

And he finally moves his car window and starts going in the other direction and turned around, trying to knock the gun out of my hand. And that's even making me more excited and scared!

In the meantime, he's reaching for the microphone. But I don't—I don't know what he's reaching for, so I—it could've been a gun for all I know—so then I just pulled the trigger and blood flew everywhere. Oh boy! I never seen so much blood.

KELBACH. And all of a sudden he pops out of the car and tries to get in on the lefthand side and the doors are locked, of all the damned things. So he runs around the car and he opens up the righthand side of the front door there and he no more than gets in, he ain't even got the door closed—

LANCE. I ain't all the way in.

KELBACH. And I let gravel fly all over the parked cars, 'cause I'm gettin' out of there. And I mean I sprayed, 'cause that gravel just sprayed up on all them cars. I betcha all them people were mad.

Question. You intended to kill him, didn't you, when he got in the cab?

LANCE. Yeah, definitely. After the first person was killed, we intended to kill anybody that we held up because there was no sense killin' one and letting fifteen go when the one that's dead ain't gonna hurt you but the fifteen you let go can probably getcha in trouble.

KELBACH. We decided we were gonna go have a beer then. And from our big caper, it was a whole nine dollars.

Question. Didja get—what'd you get—nine bucks?

LANCE. Nine dollars.

KELBACH. Yeah, it was a big caper, see.

[End reel III.]

REEL IV

[Video] Stern on camera. Super "Carl Stern, NBC News Law Correspondent" super out.

[Audio] STERN [on camera]. Lance and Kelbach left the dead cab driver near the airport and drove back to Lolly's Tavern, a bar in Salt Lake City's run-down West Side district.

[Video] Shots of Lolly's Tavern and victims.

[Audio] STERN. Firing wildly and indiscriminately, they would wound several people and kill their last three victims—James Sizemore, 47, a Navy veteran . . . Fred William Lillie, 20 years old—too young legally to be served alcohol in a bar in Utah . . . and Mrs. Beverly Mace, 34 years old.

KELBACH. We goes into Lolly's. There was a couple left, so there was just enough in that to take care of the cartridges in his gun, and so, what the heck, we're out of our mind anyway, walking around in there just like a zombie. If you seen a Frankenstein movie, how he walks in a trance and how he walks—don't even know what he's doin'—that—that can apply to us because there's no feeling; you don't feel nothin', you don't sense nuttin'—it's just like a walking zomble. Always you are—is—within yourself, self-sonsciousness—anybody says anything to you, you take offense right away. So we had—uh—these big schooners of beer. I decided to play the pinball machine.

LANCE. But before that—to give you an idea of the way I felt, even though I knew where I was and the time of the year and all this, was—was I had

the feelin' inside me—you know. I felt: I'll play Al Capone, or something like this, you know, and I'll get 'em all, you know.

And I had this honest feeling that, even though I knew better, that I was in this specific roaring '20 era, see? And, in fact, I was even usin' slang that they'd used back in them days, see, and "ordered da beer," and all this bull—

He—he went back to play the pinball machine.

They just got through broadcasting over a radio that was playing that the cab driver had been shot and there was talk all about what they'd do under the same circumstances, if something like that happened.

And, I'm sittin' there, I'm thinking: I wonder what they would do, you know. And me and Kelbach had discussed it for a few minutes, so then we decided then, really, to hold the place up.

And I—uh—one of the guys says—uh—"Wish I had a big .45 and they'd come in here, I could fix them," you know. And I reached under the bar and I said, "Would a .38, P-38 do?" The other guy says, "Yeah, that'd work, but I'd still rather have a .45," you know.

So I stepped back then and at the same time he let the balls go and I said, "Well, here's a P-38, try this one." And everybody sort of half turned to see what was goin' on down there, so I shot and got one of 'em behind the ear—the first guy that was shot in the bar—and he fell down between the—well, he fell forward first and slid off, I guess, in between the stools.

I really couldn't tell you where the people were laying. And when the first shot went off, Kelbach stepped out from around the front of the machine and stepped back where he could guard this one door, see. And he was—he was holdin' a pistol that he had, a starter pistol pointed at the floor because if you held it up you could look down the cylinder and see that it was a blank—that it wasn't—it wasn't even loaded.

KELBACH. Wasn't even any cartridges in it.

LANCE. Well, it'd never been fired for about three weeks beforehand. And after that first shot was fired it looked like—did you ever step in a chicken coop and slam the door and see chickens fly everywhere? That's what it was.

Question. Did you tell 'em it was a holdup before you shot?

LANCE. Yeah. In fact, I said, "Here's a P-38, this is a holdup," or something like that, something similar.

KELBACH. Bartender give him the money and everything.

LANCE. He just picked the whole cash register up and set it on the bar.

I said, "Well, open the cash register up," and he—the cash register come open and I put the money in my pockets, see.

And—and I'm nervous. I don't know if anyone else has got a gun, you know, and so I just started shootin', you know, and the bullets are flying everywhere. One woman got it either through the arm or the wrist and then through the throat—uh—I missed several others.

One guy turned around because Kelbach had said something down at the other end or something, and when he turned around he was right in front of me and I just pulled the trigger and it went through his shoulder and come out over here—other—it deflected off his shoulder bone, and they said later that if it hadn't 've deflected it would have come out in this vicinity here and saved his life. And he fainted—well he passed out really.

In the meantime, I'd shot at Charles Haney. I shot down his way. You know those beer spigots you draw your draft beer with? It was sittin' right directly in front of—in line with him and when I fired, I fired like this, and I seen the bullet glance off from—you know, seen the glass drop.

So then I raised the gun—instead of steppin' to one side, I raised the gun and was trying to shoot like this, instead of pointin'—I wasn't even aiming the gun—and fired everywhere.

Question. Did someone try and get out the back door when you were in Lolly's?

LANCE. Yeah, Fred Lillie started to go out the back door first and then changed his mind and went the other way 'cause he thought I was pretty busy. And I happened to glance—to see his head bobbing up and runnin' around behind the thing, so I just stepped around the corner and when he stuck his head around I just shot him and he dropped on the floor.

Question. What would have happened if he had of gone out?

KELBACH. He'd a got knifed. If, he'd a come through he'd a got knifed.

That's was all there was to it. I had it nice and handy and there was no question of it, my intent was, at the time, leave no witnesses 'cause dead people tell no tales.

And you can bet your bottom dollar that if we knew when we were gettin' ready to leave that there would'a been somebody left, we'd a ran around and checked. We had more faith in his shootin'.

LANCE. [Laugh] Thanks.

I went back to the cash register then and finished taking the money out and this one bartender had already fell to the floor once after I'd shot at him before Lillie had took off and he said he got powder burns on the side of the face and he was playing dead down there, and I reached across the bar and fired four or five shots into the floor and then I—after I finished picking up the money—the gun was empty now, it was all sprung open and everything else, and I semi-loaded—you know, singally loaded it a couple times and just shot around, you know. People—I probably missed 'em, I don't know. You couldn't even see 'em half the time.

And—uh—meantime, Kelbach just be standing back there grinning and laughing, you know. And I guess people'd start going towards him and he'd make a motion. He couldn't do nothing'. All he was was a big bluff. Ha ha ha.

KELBACH. So he just about had everything all cleaned up there and so I said, "Well I might as well go out and get the car started. We might as well get ready and go."

So I just walked towards him while he was firing down the line, and then I just walked towards him, bullets just going by, and I told him I was going to go out and start the car and get it warmed up and I walked out the front door.

LANCE. What gets me is, one of the first shots that went down that way, he was still halfway leanin' against this pool table—uh—this pinball machine, and there's a bullet went right past him, here, just missed him and plowed into the wall. And he didn't realize that later. He'd felt somethin' go by but he never realized what it was until the police later brought the mentioned up and wondered how it got down there.

KELBACH. They still owe me a nickel from the pinball machine.

Question. What would have happened down at Lolly's Tavern if one of the bartenders had come up with a gun and things woulda been about even around there?

LANCE. I'd just started pullin' the trigger 'cause he'll—hesitate for a second and I won't. If anything had moved I was shootin' at it except for him. If someone—an innocent bystander—had of just opened up the door and said "hey!" I'da shot—I'da shot at the sound, if nothin' else.

KELBACH. And I'da doggone sure thrown the knife at 'em!

LANCE. I'm walking around kicking people to see if they'll move, see. They could be squirming all over for all I know—it was just a blur, and ears are ringing. Oh, 12 shots, I guess, been fired as fast as you can pull a trigger, except for the last two, which I loaded.

My ears were—sounded like someone was still shootin' in there, is what it sounded like.

And so I'd walk back around and I went to the door and opened the door up and threw the door—just pulled the door shut like this—and at that time one of the—the bartender Lloyd Graven had got up, fiddled around and found his .38 and he'd shot at me and he'd hit the door and glanced off, and I didn't even know he'd even shot at me; I thought it was still an echo and I went out and got in the car.

KELBACH. And we goes down to Holiday Inn. We were gonna eat there but it's midnight, so it's closed. So we goes all the way back up town to this Chinese place that stays open downtown.

LANCE. I think it's Oriental.

KELBACH. Oriental Cafe—and we goes in there to eat and there is a drunk in there who's lost his coat and he's causing a big disturbance over coats and two policemen come in, see.

LANCE. And I'm sittin' down there waving at the cops, see.

KELBACH. They didn't say nothin'.

LANCE. They'd wave back and they's—their mind was all fixed I guess on this—this drunk who's raising Cain, and he waved to us.

Finally, after we ate, we got up and walked out.

We start the car up, passed the police car and—uh—I guess we passed three or four cops after that that was shining flashlights in the cars. Never stop, just drive up next to the car and shine it in and go on.

And—uh—uh—then we——

KELBACH. We went to the Jade Cafe where we got a large coke for his sister Mary—his other sister who was home tending the kids.

Well, we got there and she was sick, so they had to call the police ambulance. Well, we decided that was the time for us to kind of, you know, motivate outa there, so——

LANCE. I said, "Well, we'll meet you at the hospital." We didn't wanna be there when the police came, see.

So we went out and got in the car, and we had no intentions whatsoever of going up to that hospital. So we started—uh——

KELBACH. That's when we went up and we were gonna go up towards Park City, so we gets up—part way up there and we made a wrong turn off one of the roads going up towards the highway there, and—uh—so then we sat around for a couple minutes deciding, well should we or shouldn't we? Oh, yeah, we'll go on up there. What the heck, if the police stopped us at a roadblock, they ain't gonna know who anyway because dead people tell no tales, you know—no witnesses, and that, so—uh—we goes on up and I'm going around the curve—I'm driving and I think I'm really going to town and I'm really driving fast—I must be doing five, ten, fifteen miles an hour, see.

LANCE. He's weavin' down the street like a snake.

KELBACH. I am outa my mind. I don't even know where I'm at.

And so we're getting up there and pulls up and we see a bunch of lights and—red lights.

"Oh there must have been an accident up there," and we stopped. Must have been an accident up there, so we said, "Oh well, we might as well go on."

So we goes on up and pulls—and so they got these little markers in the road here for the—uh—to pull in, you know, for the thing. So we pulls on in on the—way on the righthand side like we were gonna stop, maybe we could help em' you know. We're good citizens.

And or they flagged us out in between here and I had a heck of a time gettin' that car out there.

LANCE. Just before he gets there, though, I said, "Well, it's—it's a road block of some kind." And I'm still on a paranoid kick, see, so I pull out the gun. I says, "Well you run the roadblock and I'll get 'em," you see. There's about 30 or 40 or 50 or a hundred of 'em up there, see, and I don't know it at this time.

They get a little closer and I see how many there are and I just stuck the gun back in and I says, "Maybe they are just investigating an accident," you know. I'm hopin' they are, see.

KELBACH. So we get's up and into this roadblock and they come and look at us, you know—flash a light at us.

LANCE. One officer come up and he's got a big double-barreled shotgun, you see, and he's tappin' the barrel of it on the hood in front of me, and my hands went up. Boy, I seen that big shotgun.

And Kelbach's just looking at him, you know, like "Who do you think you are?" See.

He found out when he reached over and tapped it on the windshield. And he seen that—well, his hair stood straight in the air and he just broke out in sweat.

KELBACH. Those big barrels look mighty big when you're on the wrong end of 'em.

LANCE. So he—he steps out of the car and they shake me down—take my shoes off, and I'm standing there. And they shake me down—they find the .38, the P-38, and oh, they were mad 'cause it was loaded, cocked and everything else, ready to go. And I had it in my pants in such a way where the only thing the policeman could do was to grab it by the stock. That way, any fingerprints was on it would be taken off and his put on, see.

After they found my gun they shook Kelbach down and they were mad then 'cause they found one on him.

So, I never touched the ground—all the way from the squad car, for about 250 yards to where we had this other car and, uh, it was quite deal there.
[End reel IV.]

REEL V

[Video] Stern on camera.

[Audio] STERN on camera]. Lance and Kelbach have described how they killed six people.

But who are Lance and Kelbach? What are their backgrounds, motives, their feelings about killing and suffering? Are these matters relevant in determining whether they should be executed and, if so, how is a legislator to reduce these things to a simple formula in a statute book . . . a formula that would call for an automatic tilting of the scales to require the death penalty, as the Supreme Court now suggests is needed, if capital punishment is to be preserved?

Question. When did you first start to carry a knife, Wally—and how old were you?

KELBACH. Oh, I've always carried a knife. I usta carry a knife when I was 7 or 8. I usta have a switchblade that I carried plus my fishing knives and that, when I went fishin' off the piers and stuff like that.

Question. Did you ever use it when you were young? You know, threaten somebody with it?

KELBACH. No. The only thing I ever killed that young and that what I was doing was I was cuttin' off the heads and that of fish and stuff like that. Nice perch, you know, from fishing. And that, or maybe taking little firecrackers and tying 'em around snakes' necks and then lighting 'em and watchin' 'em blow up or something like that, or takin' frogs and dissectin' 'em a little bit or—

Question. How about you with guns?

LANCE. Oh, I have always had guns at one time or another. I guess since about 15, 16.

Question. When you have that gun in your hand that built up your ego and you kinda—like—ah—

LANCE. You'd be surprised how much it does, too. Uh, I don't know, you got a gun and you know that that—well, the average person just ain't gonna run up to you and try to pick a fight with you if you got a gun pointin' at him, ya know. And if he does, shoot him—he ain't gonna do nothin' after you shoot him.

KELBACH. Just like most men'll tell you they've been around a lotta weapons, and actually they're more scared of a knife than they are a gun. 'Course I ain't never been around a gun that much.

LANCE. The only thing good about a knife is you can outrun a knife.

Question. A knife—a knife makes it bleed more.

KELBACH. Nuttin' wrong with that. But, uh, I never been around guns much 'cept for in service where I was taught how to use one. I was taught that if you're gonna take it out to use it, otherwise just don't take it out.

LANCE. I hope they pass that gun law. It'll make it harder for the citizens to protect themselves. That way we could get guns easier—ha ha.

Question. There's a theory.

KELBACH. That's right. That is exactly what—

LANCE. Well, you stop and think about it now. You take the guns away from the citizens, it'll make it a little harder for us to get 'em but it'll make it a damned sight harder on the citizens because they want to go about it, gettin' it, legally. We'll just go steal it.

KELBACH. Well heck, you always got National Guard armories and stuff like that got weapons in 'em.

Question. Were things quiet around your house when you were young?

LANCE. No, uh, my mother and her various number of husbands was always fightin', quarreling—uh—my mother's been in trouble; at the time of her death she was on probation for grand larceny.

Question. Was there anything ever discussed around the table at mealtime other than crime and violence, from Grandpappy on down?

LANCE. Not really. That was more or less like you hear people sittin' around tellin' old folk tales. Well, these were no folk tales. They were actually happenings in the family.

I've got one—uh—one aunt that's been in prison for arson. I got no—my dad, he was in prison for blowin' up a thrashing machine. Got several relatives that's been in trouble off and on, but even had one relation that was hung for—uh—for horse stealin'. Also had one that come out here to prison for—uh—some train robbery.

Question—How do you feel about each other?

LANCE. In what respect? ha ha.

Question. Any respect, any way at all.

KELBACH. Well, go ahead, commit yourself. [Laughs.]

LANCE. Yeah. I don't know. I trust him and he trusts me. I know that, uh, he won't do anything that would jeopardize me without first talking with me. I'd say I gotta lot o' respect for him. I couldn't say that I loved him, you know, ha ha. He's too sadistical in a lotta ways for that.

Question. How about you?

KELBACH. Well, I respect him and I trust him and that's more than I do 99 percent of the other people I know, and that. That's why he is closer to me than others. I know that nobody's gonna come at my back while he's there, and vice-versa. He knows that I ain't gonna let nobody get at his while I'm there, and that. And this is the way we have our mutual understanding and this is the way we work.

Question. How do you feel about the people you killed—any particular way, one way or the other?

LANCE. Oh, the only real regret I've got is the woman. I guess it's mainly because I think of all her children probably. Other than that I haven't real feeling towards any of the others—has no value. Actually, the —lot of ways life has no value to me at all. You're born to die. There's no way you can 'escape' that. All I did was help it.

Question. How about you, Wally?

KELBACH. I got no feelins' whatsoever. I got—I could be perfectly honest with ya, I'd have no feelings if somebody keeled over right here. I got wouldn't make no difference to me, really. I got no feelings about anything I've done.

Question. Why do you think that is?

KELBACH. I don't know. No one's ever said why—ever told me why and—

Question. Have you ever thought about it?

KELBACH. Ooh—I thought about why some people get so emotional all the time over somethin' and that, but—try and figure it out, that—might be immaturity or somethin' on their part that they get emotional because no matter where you go people're gonna die and if they're gonna go they're just gonna go. I jest let it go. No sense in worrying about it because, uh, you see, people that worry about that worry about bills and where do you end up, in a mental institution. No sense gettin' there.

Question. You get a thrill out of seeing them die, don't you?

KELBACH. I don't—I kinda laugh sometimes.

Question. Don't you get a special thrill or a charge out of seeing somebody die with a knife, or a knife you—Wally, you used a knife most of your life and you had an application to work in the surgery at the Veterans Hospital when you were in the county jail, and I was just wondering if you just didn't like to be around blood and somebody gettin' cut up.

KELBACH. Sure, I like to see what it does, and that. I mean, I can't say that I'm not sadistic 'cause I am. I don't mind people gettin' hurt because I just like to watch it. Don't ask me why or how or what because I can't answer that, but I don't mind a bit.

That's just like I told you, if somebody was to keel over here, if somebody knifed one of these guards here—I'd just stand there and laugh.

Question. You'd like it better, though if one of 'em were cut with a knife instead of one just dropping over with a heart attack, then?

KELBACH. Right. I'd just as soon see that. I'd just as soon see 'em suffer a little bit on the way—while they're dyin'. I'd like to see 'em crawl up the last inch to the quarter and just about get to the telephone for aid and then not make it.

LANCE. Ha ha ha. Okay—ha ha ha.

[Video] Super "Dr. R. J. Howell, Psychologist" super out.

[Audio] Dr. R. J. HOWELL, Psychologist. Walter Kalbach was seen under the direction of Dr. Paul Bramwell who was here at the prison at that time and my direction by a doctoral student in November of 1966.

After he was returned to the State Prison, following his conviction of first-degree murder in May of 1967, I saw him again and I found his condition at this time to be much the same as it was in November of '66—that I could not find that he had any emotional or mental illness that would relate to the question of insanity in a court of law.

We did find him to be of average intelligence, to be a man who had had a life-long history and feelings of inadequacy, inferiority, unimportance, discouragement and failure, and I would speculate that these killings that he and his partner engaged in, at least on his part, related to his attempts to gain importance in his own eyes.

[Video] Super "Dr. I. Reed Payne, Psychologist" super out.

[Audio] Dr. I. REED PAYNE, Psychologist. Mr. Lance was, in my opinion, neither psychotic—and I don't believe he was crazy in any sense of the word.

He's an anti-social individual, a man who has developed a don't-care attitude. He cares very little for himself or for others. Kind of a hopeless, helpless, feeling was what I got from the interaction.

[Video] Stern on camera.

[Audio] STERN [on camera]. One wonders why Lance and Kelbach allowed themselves to be filmed. Their confession was so damaging it would have destroyed any hope of a successful appeal. And remember, the interview was filmed before the Supreme Court's decision spared them from execution.

The truth may lie in a fact that was *not* brought out in the interview. When police searched their rooms after their capture, they found hundreds of clippings from newspapers describing the murders. To Lance and Kelbach, these clippings were glory . . . and what greater glory than the greatest clipping of all—the long, long interview for television?

But that is not *our* purpose.

Lance and Kelbach no longer face the prospect of execution by a Utah firing squad. Like the other 600 Death Row inmates around the country they will be re-sentenced to a maximum of life in prison.

But what of future Lances and Kelbachs? If Utah would prefer to execute them, can it write a law that would meet Supreme Court requirements—a law imposing the death penalty automatically and yet meeting fundamental precepts of justice? Should the test be multiple killing, or a lack of remorse, or the sheer malice with which the killing is done?

Some states undoubtedly will attempt to draft such laws. They will be reviewed by the Supreme Court and it is quite possible that as the Court's membership changes, some accommodations will still be worked out to preserve the death penalty in extreme cases.

If that happens, will it deter anyone? That has always been one of the basic questions. In the case of Lance and Kelbach it is impossible to judge whether facing even absolutely certain execution would have deterred them. Almost everything in the interview suggests the answer is "No." Even when they thought they were going to die they showed no apparent remorse.

[Video] Lance and Kelbach with big sound. Lance laughs.

[Audio] LANCE. [Laughs.]

[Video] Stern on camera.

[Audio] STERN [on camera]. We asked Captain Ferris Andrus, the man who captured them and who probably knows them best, how they could be so cheerful.

He answered: "It's a defense . . . they laugh to keep from crying."

For an instant that defense did crack during the long interview . . . and that may hold the only promise. It occurred when Lance was talking about people who might be foolish enough to imitate him and his partner . . .

[Video] Lance on camera.

[Audio] LANCE. [on camera]. We're serious. We may laugh and joke, at places here and there, but that's mainly for our own benefit because they can no more than shoot us. But think of the people out there that could end up in our shoes and it ain't very funny.

[Video] Freeze frame go to black.

[End reel V.]

CREDITS

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Michael Gallivan

Consultant, Captain Ferris Andrus

Interviewer, Art Kent

AFTERNOON SESSION

Senator McCLELLAN. We will come to order.

**OPENING STATEMENT OF HON. JOHN L. McCLELLAN, A U.S.
SENATOR FROM THE STATE OF ARKANSAS**

This afternoon we are pleased to have with us as witnesses two noted jurists, Judge J. Edward Lumbard of the U.S. Circuit Court of Appeals for the Second Circuit and Judge Walter E. Hoffman, Chief Judge of the U.S. District Court for the Eastern District of Virginia, and Prof. Livingston Hall of the Harvard Law School. These gentlemen appear here today to provide us with their insight into a most significant question now being debated throughout the legal community—that of appellate review of sentencing. We welcome them to the subcommittee hearings.

As we are all well aware, in recent years our society has become more and more concerned—and justly so—with the rise in crime and an apparent breakdown in the entire system of law enforcement. One result of this mounting concern has been a growing awareness of the inadequacies not only of our enforcement agencies, but also of our judicial systems—both State and Federal. Day after day, the public is faced with the picture of its judicial system failing to fulfill the very purpose for which it was established—failing, in short, to render justice. This problem is undoubtedly most apparent in the sentencing process where, through the press and television, the public is all too often subjected to incidents of courts failing to mete out punishments appropriate to the crime—be they too harsh or too lenient—and failing to treat those convicted of similar crimes in the same way.

A recent study prepared by the Administrative Office of the U.S. Courts and made available to the subcommittee bears this out. (See the Code Hearings, part IV—appendix (courts and corrections), p. 3896.) The study revealed that sentence variations for the same offenses among Federal district courts were substantial. This study found, for example: That men received prison sentences more often than women; that those over 35 received prison sentences more often than those under 35; that defendants with appointed counsel were

sentenced to prison more frequently than those with private counsel; and that black defendants were sentenced to prison more frequently than white.

Difference in age and sex may justify some difference in treatment at sentencing, but it is certainly difficult to justify different treatment because of poverty or race.

The problem of inconsistent sentencing exists not only between districts but even within districts. A recent study of sentencing practices in the Southern District of New York prepared by the U.S. attorney revealed the same disparities between judges of that one district as exist on the national level. The study led the U.S. attorney to conclude that there appeared to be a form of indirect discrimination growing out of the different treatment of offenders for different classes of violations. Another conclusion was that poor persons receive harsher treatment in the Federal courts than do well-to-do defendants charged with more sophisticated crimes. In summarizing his results, the U.S. attorney indicated that his study underscores the need for a more evenhanded approach to the sentencing process.

Without objection, I will place the New York study in the record following these remarks.

Recognition of the problems surrounding the sentencing procedure has resulted in growing support for the concept of appellate review of sentences. Advocates of this approach argue that the responsibility of imposing sentence is so great, by reason of its effect on both the individual and society, as to justify this type of review. They also point out that the sentencing power is the only discretionary power vested in the trial judge that is not subject to review and suggest that there is no reason to distinguish this decision from any others the trial judge must make. It is also urged that a system of appellate review will be a vehicle for the development of a jurisprudence of sentencing. Such a new body of law would serve as a guide to courts throughout the Nation on this aspect of a criminal trial and help to insure equality under the law.

This afternoon we focus on two bills that incorporate the principle of appellate review—although in varying degrees. S. 1, as introduced, provides for review of sentences in cases involving dangerous special offenders. S. 716, on the other hand, would apply this procedure to all criminal cases.

I was pleased to join the distinguished Senator from Nebraska as cosponsor of S. 716 because I, too, recognize the need for appellate review of sentences in more than just special offender cases. As I indicated at the time the bill was introduced, however, I have serious questions concerning the scope of review it provides. Whereas S. 1 would establish an appellate procedure permitting both increase and decrease of a sentence, S. 716 would prohibit increasing a sentence on appeal.

Admittedly, our courts are sometimes guilty of the charge of excessive sentences. This is, however, only one side of the problem. They are at least equally—if not more—susceptible to the charge of being too lenient. The records of our courts are filled with instances

of judges failing to adequately punish convicted criminals—whether it be because of corruption, ignorance or a good faith mistake.

An excellent example of such a failure is one which I cited on the floor of the Senate when Senator Hruska introduced S. 716. I repeat it here because it sets out clearly this particular aspect of the sentencing problem.

The case in question is that of Anthony “Tony Ducks” Corallo, one of the worst gangsters the Senate Labor-Rackets Investigations Subcommittee uncovered during my years as chairman. A captain in one of New York’s five Mafia “families,” Corallo had won his alias because he always managed to “duck” the law. The subcommittee hearings’ record revealed how Corallo helped Jimmy Hoffa gain control of New York City’s Teamsters by bringing in 40 hoodlums to intimidate the members. In 1962, Corallo was convicted of conspiracy to pay a \$35,000 bribe to a New York judge and an assistant U.S. Attorney to “fix” a friend’s sentence for a \$100,000 bankruptcy fraud. Despite an extensive public record of his activities, Corallo received only a 2-year sentence instead of the maximum 5-year term. Of this sentence he actually served only 18 months, and in 1968, Federal investigators publicly stated Corallo and his associates were once again controlling at least seven of the 56 Teamster locals in the New York area, forcing millions of consumers to pay hidden tribute.

In June of 1968, Corallo was again convicted, under the same Federal antiracketeering statute. This time the conviction was for loan-sharking a financially pressed New York City water commissioner. Through this loan-shark deal he arranged and shared in a \$40,000 kickback on a city contract. Corallo stood before the same Federal judge who had previously sentenced him. Specifically recalling the previous case, the judge gave Corallo only 3 years instead of the maximum 5.

Without objection I will place in the record of these hearings a memorandum outlining several similar instances uncovered by the subcommittee in 1970. [See p. 5261.]

I submit that justice is as effectively thwarted and the needs of society just as surely defeated when sentences are too lenient as when they are too harsh. The principle is the same. It is for this reason that if appellate review of sentencing is to be acceptable, it must provide for mutuality. The procedure to be established must provide for an appeal of inappropriate sentences by both the prosecutor and the defense, and empower the reviewing body to increase as well as decrease unjust sentences.

It has been argued by some that a system of appellate review which creates the possibility of an appellate tribunal increasing a sentence might be unconstitutional as violative of due process and the prohibition against double jeopardy. In recent case, *Robinson v. Warden, Maryland House of Corrections*, 455 F. 2d 1172 (1972), these very issues were raised before the U.S. Court of Appeals for the Fourth Circuit. That court therein decided that the guarantees provided by the Constitution did not preclude such a system of appellate review. In discussing the Maryland statute at issue, which

provided for review of a sentence upon petition by the person convicted, the court stated that such a petition:

“Fully opens the propriety of the sentence at the behest of the defendant who seeks review. . . . [T]he state has an interest in assuring that punishment for similar criminal conduct is uniformly imposed.” [Id. at 1174]

As I have already stated, the concept of sentence review has been gaining wide support throughout the legal community, although differences do exist as to the scope of any such review. Another question that must be considered by the subcommittee concerns the implementation of any system of review, assuming its acceptability. With respect to this issue, I recently received a letter from Mr. Rowland F. Kirks, Director of the Administrative office of the U.S. Courts. Mr. Kirks advised that the Advisory Committee on Criminal Rules was presently considering a proposed new rule 35 which would provide an alternative to appellate review, namely, the designation of a rotary panel of district judges in each circuit who would review sentences on petition. Certainly any such possible alternative should be considered by the subcommittee. I hope our noted jurists will be able to enlighten us this afternoon on this proposal. However, whatever conclusion is finally reached in this regard, a decision must also be made as to how that answer will be carried out—whether by rulemaking power of the courts or by legislative enactment.

Without objection I will insert in the record at this point S. 716 and a copy of the letter and enclosure explaining the proposed new rule 35 forwarded to me by Mr. Kirks.

[The above-mentioned materials follow:]

93^d CONGRESS
1ST SESSION

S. 716

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 1973

Mr. HRUSKA (for himself, Mr. BURDICK, Mr. FONG, Mr. GURNEY, Mr. HART, Mr. McCLELLAN, Mr. MATHIAS, Mr. SCOTT of Pennsylvania, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the district courts of the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) chapter 235 of title 18, United States Code, is
4 amended by inserting immediately after section 3741 thereof
5 the following new section:

6 **“§ 3742. Appeal from sentence**

7 “(a) An application for leave to appeal from the dis-
8 trict court to the court of appeals the sentence of imprison-
9 ment or death imposed may be filed by a defendant with

1 the clerk of the district court in any felony case in the fol-
2 lowing instances:

3 “(i) after a finding of guilt by a judge or jury,
4 whether following a trial or the acceptance of a plea;

5 “(ii) after the revocation or modification of an
6 order suspending the imposition or execution of a sen-
7 tence or placing the defendant on probation;

8 “(iii) after a resentencing under any other applicable
9 provision of law.

10 “(b) Upon granting leave to appeal, the court of
11 appeals may review the merits of the sentence imposed to
12 determine whether it is excessive. This power shall be in
13 addition to all other powers of review presently existing or
14 hereafter conferred by law. If the application for leave to
15 appeal is denied by the court of appeals, the decision shall
16 be final and not subject to further judicial review.

17 “(c) Upon consideration of the appeal, the court of ap-
18 peals may dismiss the appeal, affirm, reduce, modify, vacate,
19 or set aside the sentence imposed, remand the cause, and
20 direct the entry of an appropriate sentence or order or direct
21 such further proceedings to be had as may be required under
22 the circumstances. If the sentence imposed is not affirmed
23 or the appeal dismissed, the court of appeals shall state the
24 reasons for its action. The defendant’s sentence shall not be
25 increased as a result of an appeal granted under this section.

1 “(d) The application for leave to appeal from sentence
2 shall be regarded as a notice of appeal for all purposes, and
3 the procedure for taking an appeal under this section shall
4 follow the rules of procedure for an appeal to a court of
5 appeals. A denial of the application for leave to appeal on the
6 ground that the sentence imposed is excessive shall not prej-
7 udice any aspect of the appeal predicated on other grounds.
8 If the application is granted all issues on appeal shall be
9 heard together.

10 “(e) When an application for leave to appeal is filed,
11 the clerk of the district court shall certify to the court of ap-
12 peals such transcripts of the proceedings, records, reports,
13 documents, and other information relating to the offense or
14 offenses of the defendant and to the sentence imposed upon
15 him as the court of appeals by rule or order may require.
16 Any report or document contained in the record on appeal
17 shall be available to the defendant only to the extent that it
18 was in the district court. In each felony case in which sen-
19 tence of imprisonment or death is imposed the judge shall
20 state for the record his reasons for selecting that particular
21 sentence.

22 “(f) When a judge has adopted the sentencing proce-
23 dure set forth in section 4208 (b) of title 18, United States
24 Code, an application for leave to appeal may only be filed
25 after a judgment or order is entered by the judge following

1 the completion of the study provided by such section.

2 “(g) The provisions of section 3568 of title 18, United
3 States Code, shall be applicable to any defendant appealing
4 under this section.

5 “(h) This section shall not be construed to confer or
6 enlarge any right of a defendant to be released following his
7 conviction pending a determination of his application for
8 leave to appeal or pending an appeal under this section.

9 “(i) This section shall become effective six months
10 after its approval and shall apply only to sentences imposed
11 thereafter.”

12 (b) The analysis of chapter 235 of title 18, United
13 States Code, is amended by adding at the end thereof the
14 following new item:

“3742. Appeal from sentence.”

[From the Congressional Record, Feb. 1, 1973]

By Mr. Hruska (for himself, Mr. McClellan, Mr. Burdick, Mr. Fong, Mr. Gurney, Mr. Hart, Mr. Mathias, Mr. Scott of Pennsylvania, and Mr. Tunney)

S. 716. A bill to amend chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the district courts of the United States. Referred to the Committee on the Judiciary.

APPELLATE REVIEW OF CRIMINAL SENTENCES

Mr. HRUSKA. Mr. President, S. 716, a bill to amend chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the District Courts of the United States. I ask unanimous consent that the full text of the bill and certain related exhibits be printed in the RECORD immediately following my remarks. [See p. 5314.]

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HRUSKA. Mr. President, this legislation is identical to S. 2228 and S. 1501 which I introduced respectively in the 92d and 91st Congresses and to S. 1540 which was passed unanimously by the Senate in the 90th Congress. Broadly outlined, it would authorize the appeal of an "excessive" criminal sentence imposed by a U.S. District Court.

On January 4, 1973, the senior Senator from Arkansas, Mr. McClellan, introduced S. 1, the massive "Criminal Justice Codification Revision and Reform Act of 1973." Along with Senator Ervin, I was pleased to join the distinguished chairman of the Subcommittee on Criminal Laws and Procedures as a cosponsor of this "study bill" which will, we hope, soon be developed to supplant our current body of Federal criminal law.

When Senator McClellan introduced S. 1, he addressed himself to the question of appellate review of criminal sentences with the following words:

"Whether appellate review should be authorized on a broader scope, as the Senator from Nebraska (Mr. Hruska) has long advocated, is a question that will merit close scrutiny in the coming legislative hearings. Certainly, the evidence of sentence disparity presented to the Subcommittee calls for some close attention. I, for one, am beginning to believe that some sort of review is needed in this area, and it is my intention to hold additional hearings on this vital issue soon." (*Congressional Record*, January 12, 1973, p. S 562)

Hopefully, the bill which I have introduced today can be utilized by the Criminal Laws Subcommittee and engrafted onto S. 1 in appropriate form.

S. 1 had its genesis in the final report of the National Commission on Reform of Federal Criminal Laws. This Senator was very privileged to have been a member of that commission, along with Senators McClellan and Ervin.

The final report of this group embraced the concept of appellate review of sentencing with this suggested amendment to title 28:

"§ 1291. The courts of appeal shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands, except where direct review may be held in the Supreme Court. Such review shall in criminal cases include the power to review the sentence and to modify or set it aside for further proceedings."

This simple amendment reflected the Commission's view that there should be some form of appellate review of sentences. It did not set forth the form that the review should take nor the contours of its jurisdiction. However, the entire sentencing scheme recommended by the Commission was predicated on the idea that appellate review of sentences would be included in the revised criminal code.

However, in the context of S. 1, appellate review is recognized only with respect to sentences for dangerous special offenders, section 3-11E3 in accord with current law 18 U.S.C. section 3576, added by Public Law 91-452, the Organized Crime Control Act of 1970.

The bill which I have introduced will correct one of the greatest single injustices existing in our Federal criminal process today: The lack of authority and machinery to review unreasonable sentences. Extensive studies have shown that unreasonably harsh sentences are imposed on many individuals who stand convicted of a violation of our laws. Many of these unreasonable sentences are imposed on individuals with fine families and good backgrounds, on individuals who strayed from the path on a single occasion and under trying circumstances,

on individuals whose only offense was minor in comparison to those of others who have yet received far lesser sentences.

The problem of disparity of sentences has concerned Congress, bar associations and legal societies, students, and workers in the field of penology and, indeed, the executive branch of our Government and the courts for many years.

Putting aside what may be the ultimate or most desirable goals of a rational and humane sentence, we have in modern times been receding from the practice of enacting statutes calling for a mandatory fixed sentence. A greater number of our criminal laws now provide for a wide range of permissible sentences. The practical effect of this is obvious. As the final determining factor in the sentence to be imposed, the judge's discretionary power becomes increasingly important.

By and large the wisdom of this policy of delegating the function to the trial judge has been clearly demonstrated. Our district judges are exceedingly conscientious, knowledgeable, and experienced. They are best able, informed, and qualified to deal fairly with the convicted defendant. However, they are the first to recognize the inadequacies in the present system. The exercise of judgment in this delicate area is not easy.

The responsibility for determining the proper sentence is so great as to justify and warrant the means of review. There is little wonder that judges have openly commented on the incongruity of the situation that the power to impose a sentence is the only discretionary power vested in the Federal trial judge which is not subject to appeal.

A study of the Federal statutes and the interpretation given them by the courts establishes that no authority exists for an appellate review of the sentence imposed by the judge in a criminal case so as to determine whether the sentence is excessive. A sentence will be modified only when it is unauthorized by law as not being within the limits fixed by a valid statute.

In the 85th Congress the concern about the problem of sentence disparities brought about pioneering legislation: the Sentencing Act of 1958 which provided for institutes and joint councils on sentencing. Their value cannot be overestimated. The institutes have been described as giving "the Federal judges themselves an opportunity to assume the initiative in eliminating sentences which may appear biased, capricious, or the result of defective judgment."

However, this and other related legislation have not been a complete answer to the problem. The Judicial Conference of the United States rejected appellate review legislation in 1958, reconsidered it in 1961, and then approved appellate review legislation in 1964. When we review the actions of the Judicial Conference, it is logical to ask what caused such a substantial shift in judicial opinion. While a redraft of legislative proposals and increased interest in the problem may have played a part in this change, it is clear that the original objection of the Judicial Conference was to the principle of appellate review, and not the language of any particular bill. In retrospect, it seems that a consensus in favor of the principle did not develop until it became manifest that the problem of excessive sentences was not going to be resolved by the extensive use of the facilities provided in the Sentencing Act of 1958 or by other existing legislation.

Twelve years of experience under the act has demonstrated that such procedures and techniques are not enough.

Nor has indeterminate sentencing proven to be the answer to the problem. For various reasons, many judges have declined to impose indeterminate sentences, or have imposed such sentences only infrequently.

While I am quick to recognize that S. 1 eliminates many of the sentencing disparities and inequities heretofore visited upon criminal defendants in the Federal courts, it is also clear that any new sentencing scheme will not provide a talismanic cure for improper sentences which will be imposed by Federal courts.

To adequately cope with the problem of improper sentences—to correct injustices once they have occurred—the practice of appellate review is required.

Mr. President, excessive and disparate sentencing prevent the rehabilitation of those who have been unjustly sentenced, they contribute to disorder in our prisons, and they increase disrespect for our criminal process which weakens the moral fiber of our citizens and which can only result in increasing violations of our laws.

As Justice Potter Stewart wrote in 1958, prior to the time of his appointment to the Supreme Court of the United States:

"Justice is measured in many ways, but to a convicted criminal its surest measure lies in the fairness of the sentence he receives."

The fact that the overwhelming majority of defendants in our Federal courts are convicted by pleas of guilty or nolo contendere magnifies the importance of the sentencing process.

Mr. President, the real anomaly and injustice of the existing lack of review of sentences was pinpointed by the introductory statement of the tentative draft of the American Bar Association's Advisory Committee on Sentencing and Review, "Standards Relating to Appellate Review of Sentences" when it stated:

"One of the most striking ironies of the law involves a comparison of the methods for determining guilt and the methods of determining sentence. The guilt-determination process is hedged in with many rules of evidence, with many procedural rules, and most importantly for present purposes, with a carefully structured system of appellate review designed to ferret out the slightest error. Yet in the vast majority of criminal convictions in this country—90 percent in some jurisdictions, 70 percent in others—the issue of guilt is not disputed.

"What is disputed and, in many more than the guilty plea cases alone, what is the only real issue at stake, is the question of appropriate punishment. But by comparison to the case with which the less-frequent problem of guilt is resolved, the protections in most jurisdictions surrounding the determination of sentence are indeed miniscule."

The protections in our Federal courts surrounding the determination of sentences are indeed miniscule and the situation must be corrected.

Mr. President, the concept of appellate review of sentences is not new to criminal law in the United States. Prior to 1891 the Federal Code provided a right to appeal a case on the basis of a disproportionately severe sentence. However, due to an oversight or inadvertence, a revision of the statute in 1891 did not mention sentences and the courts subsequently held that the power had been withdrawn by Congress.

The situation that presently prevails in the Federal courts stands in marked contrast to the practice of 17 States, many foreign nations—including England and Canada—and our military courts. Indeed, the Federal jurisdiction is a singular example of an advanced system of jurisprudence that does not allow review of sentences.

Under our existing Federal law the determination of the sentence in a criminal case is the only matter that is left to the unsupervised discretion of the district judge before whom the case is pending. As long as the sentence imposed is within the statutory limits provided by the law, the sentence is unreviewable by appeal. No matter how excessive or unjust the sentence might be, an appellate court is legally powerless to modify it in any way.

This basic shortcoming in our criminal procedure has allowed serious inequities and disparities in the sentences which have been imposed.

Another unfortunate aspect of the present practice is that harsh and irrational sentences have often led appeal courts to reverse convictions on technical or minor points and on strained interpretations of the law, interpretations which may not serve justice and society in future cases.

A recent trilogy of cases in the Sixth Circuit—*United States v. Daniels*, 446 F. 2d 967 (6th Cir. 1971); *United States v. Charles*, 6th Cir. No. 71-2061 (decided May 26, 1972); and *United States v. McKinney*, 6th Cir. No. 72-1480 (decided June 15, 1972)—points to the inane disposition sometimes made by well-meaning but misguided district courts and the resultant problems for our circuit courts. I might note that the Sixth Circuit—to my knowledge—stands alone in its attempts to modify some extremely severe sentencing practices.

I do not suggest that this bill will solve all of the difficult problems in the determination of proper sentences. However, it will provide a significant tool for improving the sentencing process and for correcting unjust sentences when they are imposed.

Other phases of the work of trial judges are subject to appellate review and supervision. Only sentencing errors are immune to correction on appeal. The reasons for such a gap are for the most part historical. Such reasons are becoming irreconcilable with the standards of due process and are not in step with the need for a fair and just sentencing system.

This legislation will not allow one judge or a panel of judges, simply to substitute their judgment for that of the trial judge. Mere whim or fancy will be insufficient reason to modify the sentence. Only when it reasonably appears from the circumstances that a sentence was excessive will the appellate court act. Although the system will be made flexible by allowing review, it will remain the trial judge's duty to weigh the facts and appraise the defendant.

Valid reasons exist for variations in sentences for the same crime. Certainly a sentence which may be quite proper in a case involving one defendant and one set of circumstances may be grossly inadequate in dealing with the same offense committed by a different type of individual or under aggravated circumstances. But where the same crime has been committed by similar offenders under similar circumstances, the punishment should be reasonably uniform and just.

The determination of a proper sentence involves many considerations. Sentencing is not nor can it be reduced to an exact science. The exercise of sound judgment is an indispensable part of the process, but that does not justify arbitrary determinations. When judgments cannot be reconciled with reason, the appellate courts will be empowered to prevent a miscarriage of justice.

Mr. President, it is my hope that Congress will soon correct this injustice. I am particularly heartened by the support of my good friend, the senior Senator from Arkansas.

The hearings of the Subcommittee on Criminal Laws and Procedures on March 6, 7, and 8, relative to this bill, should explore the possibilities available with respect to appellate review and lay the necessary groundwork for subsequent committee action.

Submitted for inclusion in the Record pursuant to unanimous consent already granted, are the following exhibits:

First, report on the Institute Study of Sentencing in the Federal Courts, October 12, 1972. Law Enforcement Assistance Administration, U.S. Department of Justice.

Second, *United States v. McKinney*, 6th Cir. No. 72-1480 (dec. June 15, 1972).

Third, note, *United States v. Daniels*, 446 F. 2d 967 (6th Cir. 1971), appearing at 41 U. Cinn L. Rev. pp. 195-205 (1972).

REPORT ON THE INSTITUTE STUDY OF SENTENCING IN THE FEDERAL DISTRICT COURTS

PURPOSE

The study was designed to investigate disparities among the Federal District Courts in type and length of sentence and to analyze the relationship between defendant characteristics and sentencing variations. The study also analyzed sentencing disparities within circuits, and their relationship to defendant characteristics.

BACKGROUND

In 1966, Congress created the National Commission on Reform of the Federal Criminal Laws to review and study the statutory and case law of the United States. The Commission was to develop recommendations to Congress for legislation which would improve the Federal System of criminal justice, including possible revisions, recodifications and repeals, as well as possible changes in the penalty structure.

The Commission submitted its recommendations to the President and the Congress in January, 1971, and hearings on the Commission's recommendations began in February, 1971 before the U.S. Senate Subcommittee on Criminal Law and Procedure.

The Administrative Office of United States Courts was requested to provide the Subcommittee with a report on the sentencing data which it collects and analyzes yearly from the 93 Federal District Courts. Early this year the Administrative Office sent to the Subcommittee its report covering the years 1967 through 1971. In March, the Subcommittee requested the National Institute to undertake an analysis of the sentencing data to determine whether there were any disparities in sentences among the Federal courts and, if so, their magnitude.

Shortly thereafter, the Institute initiated the Study of Sentencing in the Federal District Courts. Three preliminary reports were prepared for the Subcommittee before July, two specifically dealing with sentence disparity, and the third reporting on U.S. Probation Officer workloads. This Report summarizes the entire study's findings on sentence disparities.

STUDY OBJECTIVES

The Institute established three major objectives for the study: To provide basic information on sentencing variations among the Federal Courts—

(1) To Congress, to assist in the conduct of hearings on the Commission's recommendations for reform of the Federal Criminal Laws.

(2) To the Federal Courts, to increase their awareness of existing disparities.

(3) To the Federal Correctional Institutions and the U.S. Parole Board, to assist them in their efforts to develop more equitable procedures and practices.

DISCUSSION

Sentence disparity has been a subject of discussion and investigation by criminal justice professionals, both Federal and state, for many years. Correctional officials, in particular, have found that inequities in sentencing for the same crime between offenders with similar backgrounds may be a hindrance to rehabilitation.

Among the many suggested causes of sentence disparity are difference in the attitudes and behavior of judges and probation officers. In its Final Report, the National Commission on Reform of the Federal Criminal Laws recommends that the appellate review process be revised to include the review of sentences. Such a review could result in modified sentences, or in cases being set aside for further proceedings (see the Commission's Final Report, section 1291). The Final Report states that the American Bar Association has endorsed this recommendation.

Few will dispute that some sentencing variations are inevitable and not necessarily inappropriate in the exercise of judicial discretion. Such variations are not, therefore, disparities *per se*. However, inequitable and unreasonable variations can only create bitterness on the part of offenders and further complicate the rehabilitation process. There is also wide agreement that solutions are not easy, and that defendants' behavioral and background characteristics will vary to some degree among the circuits. Nevertheless, there is a need to attempt to eliminate extreme variation in the sentencing process. The sentencing information presented in this report, hopefully, will assist current and future efforts to do so, particularly in the Federal Courts.

It is important to note that this study does not attempt to establish the causes or suggest a cure for variations in type and length of sentences. The study examines the data only to find the extent of the variation and to ascertain how certain defendant characteristics are related to it.

The study did not have available all the physical, social and psychological characteristics that could influence the sentencing process. The background data furnished by the Administrative Office do not include information on defendant attitudes and general behavior and include only information on the age, race, sex and prior record of each defendant. In addition to these four variables, data on the type of legal counsel were available. Finally, sufficient data for 1971 were not available on the computer tape supplied by the Administrative Office. Hence, only 1967 through 1970 data were analyzed.

The Institute ran eight tests on the data, using the computer services of Group Operations, Inc. Three Automatic Interaction Detection (AID) tests were made that compared defendant characteristics to determine which were most highly associated with sentencing variations. Two chi-square tests were run to determine whether the type of sentence (prison or probation) and circuit of trial were independent. One of these tests analyzed the data by defendants prior records. Three one-way analysis of variance tests attempted to learn whether the mean sentence lengths of the 93 Federal District Courts were roughly the same and whether any variation was due to randomness only. One of these tests included defendant prior record as a parameter.

Ten major Federal crime categories were chosen for analysis. The number of convicted and sentenced defendants in these categories represented nearly half of all Federally sentenced defendants for the four years studied. The major findings are listed below, and the analysis and evaluation of the tests are discussed in the attached Report.

MAJOR FINDINGS

1. The study found that for each crime analyzed, the type of sentence (prison or probation) given defendants varies significantly among the districts and this significant variation was found in each prior record subset analyzed. Further, the type of sentence given defendants with *no* prior record varies as significantly among the districts as that for defendants with prior *prison* records, while the variation among the districts was significantly less for defendants with prior probation and suspended records and prior juvenile records. The crime of Auto Theft illustrates the extent of the variation: the range in average percentage of prison sentences among the circuits is 11% to 41%, for defendants with *no* prior record and 61% to 90%, for defendants with prior *prison* records.

2. The study found that for each crime analyzed, the average length of prison and probation sentences varied significantly among the 93 Federal District Courts. Narcotic Drug Violation illustrates the extent of the variation: average lengths of probation sentences among the circuits range from 28 to 48 months, and the average lengths of prison sentences range from 52 to 122 months. Further, for nearly every crime analyzed, the length of sentence given defendants with no prior record, prior prison record, and prior probation and suspended record varies significantly among the districts. For half of the crimes analyzed, the length of sentence given defendants with prior juvenile records varies significantly among the districts.

3. When the relationship between prior record and sentencing was analyzed, the study found substantial consistency *within* circuits for both type and length of sentence for each crime analyzed. Thus, for each crime, defendants with similar prior records tend to be treated similarly with regard to type and length of sentence. This consistency holds whether circuits give more (or fewer) prison sentences, and longer (or shorter) prison or probation sentences than the national averages. For example, defendants in the Third Circuit, regardless of prison record, were given fewer prison sentences, on the average, than the nationwide average, for all crimes except Selective Service and Marihuana Tax Act Violations.

In the case of Selective Service, the Third Circuit gave defendants consistently more prison sentences than the national average. Conversely, defendants in the Fifth Circuit, regardless of prior record, were given consistently more prison sentences, on the average, than the nationwide average, for all crimes except Income Tax Violation. For the latter, the Fifth Circuit consistently gave fewer prison sentences.

N.B., it was impossible to determine from available data whether a prior conviction was for a felony or a misdemeanor, or was obtained in a state or Federal court. Further, it was not possible to assess whether discriminatory factors affected previous sentences in other courts.

4. The study found for the Federal crimes analyzed that nationwide, regardless of circuit, defendants with certain background characteristics were more likely to receive prison sentences than others, for nearly every crime analyzed. Thus,

a. Men received prison sentences more often than women. In fact, the average prison percentage for men were nearly double those for women in eight of the ten crimes analyzed.

b. The Over 35 age group had higher prison percentages than the Between 21 and 35 age group, which in turn had higher prison percentages than the Under 21 group. The differences between the Under 21 and Between 21 and 35 age groups varied from 0 to 17 percentage points, for all but Selective Service. The differences between the Between 21 and 35 and the Over 35 age groups varied from 0 to 12 percentage points for all but Interstate Theft and Selective Service.

c. Defendants with appointed counsel had higher prison percentages than defendants with private counsel. The appointed and private counsel groups varied from 0 to 23 percentage points for all but Narcotic Drug Violation.

d. Black defendants had higher prison percentages than white defendants (N.B., in the Federal Court data, Puerto Rican and chicano defendants are classified as whites). The black and white groups varied from 2 to 23 percentage points for all but Transportation of Forged Securities and Income Tax Violation.

[No. 72-1480, U.S. Court of Appeals for the Sixth Circuit]

UNITED STATES VERSUS PHILIP WILLIAM MCKINNEY

ORDER

Before: Phillips, Chief Judge. Weick and Celebrezze, Circuit Judges.

We are now required to consider the third appeal of this case. In the first appeal, we affirmed the judgment of conviction but remanded for reconsideration of the maximum sentence of five years imposed on the defendant upon his conviction for refusing to be inducted into the armed forces. The reason for the remand was our finding that the sentence imposed was excessive. *United States v. McKinney*, 427 F. 2d 449 (1970). Upon the remand, the District Judge adhered to his sentence and the defendant again appealed therefrom to this Court. The District Court denied ball pending appeal. Upon consideration of the arguments and briefs in the second appeal, we were still of the view that the sentence was excessive and we remanded again for reconsideration of the sentence in the light of *United States v. Daniels*, 446 F. 2d 967 (6th Cir. 1971), *United States v. McKinney*, —F.2d— (6th Cir. No. 71-1563, 1971). Upon the second remand, the District Judge for the second time, refused to reduce the sentence and the defendant appealed. He has been serving his sentence in prison since June 15, 1971.

It is our opinion that the five-year sentence imposed in accordance with the practice of the District Judge was not an individualized sentence, as required by *Williams v. New York*, 337 U.S. 241 (1949). The Court also took into account that defendant was responsible for delaying his induction in the Induction Center, and for delaying his trial and imprisonment by filing Motions and taking an appeal. Furthermore, the District Court seemed to resent our remanding for reconsideration of the sentence. A goodly portion of his remarks on the remands were devoted to a discussion of appellate review of sentences. It was the thesis of the District Court in effect, that he had absolute, uncontrollable and unreviewable discretion to impose any sentence he saw fit to impose so long as it did not exceed the statutory limit, and that an appellate court had no jurisdiction to do anything about it. He even mentioned that the heavier sentences imposed in his district brought fewer cases of Selective Service violation into court than in other districts in the Circuit where lighter sentences were imposed.

It is a well known fact that disparity in sentencing causes considerable resentment among prison inmates and it is made worse when the disparity exists in the same Circuit.

The defendant is a young married man with an infant son. He has no criminal record. His good reputation in the community where he resides was attested to by a number of persons and was uncontroverted.

Our problems with the sentencing procedures of the District Court for the Eastern District of Kentucky were again succinctly stated in the recent case of *United States v. Charles*, — F. 2d — (6th Cir. No. 71-2061) [dec. May 26, 1972]. In remanding for reconsideration of the maximum sentence imposed in that case, we said:

"Yet, as we have had occasion to point out in the past, the Courts in one District within this Circuit have persistently disregarded this individual sentencing approach with respect to one category of offenses—violations of the Selective Service laws. With very rare exceptions, the judges in the Eastern District of Kentucky have consistently meted out five-year prison sentences to draft offend-

ers regardless of the circumstances of the particular offender. We have had occasion to criticize this practice in the past, *United States v. Daniels*, 429 F. 2d 1273 (6th Cir. 1970) ; *United States v. Daniels*, 446 F. 2d 967 (6th Cir. 1971) ; *United States v. McKinney*, 427 F. 2d 449 (6th Cir. 1970) ; *United States v. McKinney*, (6th Cir. No. 71-1563, dec. Dec. 17, 1971) ; we have not changed our policy on this matter.

The maximum sentence imposed by the District Judge in the present case and his persistent adherence thereto and refusal to change the same in the two remands constituted a gross abuse of discretion as well as a violation of our mandates.

And now coming to render the judgment which the District Court should have rendered, it is ordered, adjudged and decreed that the five-year sentence imposed by the District Court be modified and reduced to one year, and as soon as defendant has served one year under the original sentence as modified, allowing credit for statutory allowances, it is ordered that he shall be forthwith released from custody.

Entered by Order of the Court.

JAMES A. HIGGINS, *Clerk*.

[From the University of Cincinnati Law Review, Vol. 41]

UNITED STATES VERSUS DANIELS

(Criminal procedure—sentencing—appellate review of sentence—trial judge's abuse of discretion in sentencing a defendant is sufficient ground for a circuit court to review the trial judge's sentence and impose a lesser sentence.)—*United States v. Daniels*, 446 F. 2d 967 (6th Cir. 1971)

Harry W. Daniels was granted conscientious objector status by his Selective Board and was ordered to report to the Central State Hospital at Anchorage, Kentucky, for civilian employment, as alternate service. However, his religious beliefs stemming from his membership in the Jehovah's Witnesses forbade him to obey an order of the draft board, although he would obey an order of a judicial body. Accordingly, he was convicted after jury trial before the United States District Court for the Eastern District of Kentucky for willingly and knowingly failing to comply with order of his local Selective Service Board. (1) The district judge sentenced him to five years in the federal penitentiary.

Daniels appealed to the Sixth Circuit from this decision on procedural grounds, but was turned down on both issues. (2) However, the court in a Per Curiam decision remanded the case to the district court to allow for the filing of a motion under Rule 35 of the Federal Rules of Criminal Procedure. (3) The Sixth Circuit suggested that the district judge suspend the sentence and grant probation on condition that appellant perform the same conscientious objector work under orders of the district court which he had refused to perform under orders of the Select Service Board. (4)

On remand, the district court refused to reduce or suspend its original five year sentence. Although the district trial judge noted that the pre-sentence report characterized Daniels as a well-behaved and well mannered young man, (5) the trial judge felt compelled to give the maximum five year sentence because for as long as he had been on the bench (some thirty years) he had always given maximum sentences in cases of a refusal to obey an order of a local draft board. On appeal again to the Sixth Circuit on the sole issue of whether the district court had properly discharged its duty in imposing sentence upon the defendant, the Sixth Circuit, per Celebrezze, J., *held*: Reversed. The district court had failed to exercise its sound discretion in imposing the five year sentence and had therefore abused its discretion in sentencing the appellant. The court of appeals then imposed its own sentence of twenty-five months probation on appellant provided that he "perform civilian work contributing to the maintenance of the national health, safety or interest for a period of twenty-four (24) consecutive months." (6)

The *Daniels* case marks an acute departure from the general rule that there is no appellate review of sentences in the Federal system. The history of this rule dates back to the Act of 1891.(7) Prior to that act the circuit courts, under the Judicature Act of 1879(8) had statutory power to review and modify sentences it has indicated, by way of * * * or unusual) or sentences which the circuit courts considered too severe.(9) But since the Act of 1891 did not expressly incorporate the sentence review section of the 1879 Act, the circuit courts held by way of implication that they no longer had sentence modification powers.(10) While the United States Supreme Court has never ruled directly on the specific issue of whether the courts of appeal have the power to review and modify sentences, it has indicated by way of strong dictum, that it feels that they lack such power.(11) However, some inroads have recently been made into the nearly iron-clad prohibition against appellate review of sentences.

The cases establishing these inroads are founded on rather limited grounds and can be divided into two distinct categories—where the sentence violated a constitutionally protected right of the defendant, and where the judge violated a statutory procedure in sentencing the defendant. The *Daniels* case develops a third category of review—where the trial judge grossly abused his discretion in sentencing the defendant.(12)

Constitutional grounds for review have generally been found where the defendant's right to appeal was jeopardized,(13) where the trial judge relied on false or improper information,(14) and where the defendant's right to trial by jury was impaired.(15) However, there are isolated instances where a case was remanded because the sentence would tend to infringe upon the defendant's first amendment right to free speech,(16) or where it would tend to be cruel and unusual punishment.(17) *United States v. Wiley*(18) is the lead case for vacating a sentence that tended to impair a defendant's right to jury trial. In *Wiley* the Seventh Circuit remanded the case for the stated reason that the trial judge had abused his discretion in sentencing the defendant to three years imprisonment. However, the court actually based its decision on evidence which indicated that the only reason for the sentence imposed by the trial court (which was harsher than that given his co-felons) was that the defendant had elected to stand trial rather than plead guilty as did his accomplices. Thus, the harsher sentence put a penalty on the defendant's constitutional right to stand trial.

Besides denial of constitutional rights as grounds for review of sentences, some appellate courts have also relied on statutory procedural errors. In *Leach v. United States*,(19) the Court of Appeals for the District of Columbia vacated the sentence imposed upon the appellant because the trial judge had not ordered a mental examination of the defendant when there was ample evidence that such an examination of the defendant should have been made. The court of appeals found that Congress had given the district court no less than three statutes on which it could have ordered such a mental examination; it then held "that the sentencing judge should use some of the resources which Congress has provided and that he may not arbitrarily ignore the data properly obtained thereby." (20) While *Daniels* is the first case in which a federal court of appeals remanded a case purely for abuse of discretion, the idea itself is not new. In *Livers v. United States*,(21) decided in 1950, the Sixth Circuit suggested in dictum that there could be review of a sentence upon "a plain showing of gross abuse" in the trial judge's exercise of his discretion in sentencing.(22) But, in that case no such abuse was found, and, for twenty years, the Sixth Circuit did not further develop this concept. Then in 1970 the Sixth Circuit decided a series of three cases involving conscientious objectors, *United States v. McKinney*,(23) *United States v. Daniels*,(24) and *United States v. Griffin*,(25) which seemed to expand the review power of the court under its abuse of discretion doctrine. The United States District Court for the Eastern District of Kentucky sentenced all three defendants to five years imprisonment. On appeal, the Sixth Circuit affirmed all three convictions but remanded the cases for resentencing in light of its opinion which said that, under the circumstances, the sentences were excessive.(26)

The *Griffin* case was later dismissed on appeal to the Supreme Court on other grounds;(27) thus the district judge did not have an opportunity to resentence. However, *Daniels* and *McKinney* were sent back, and instead of taking the

court of appeal's suggestion as to probation, the district judge reimposed the same five year sentence. Both cases were again appealed; in *Daniels* the Sixth Circuit imposed its own sentence and *McKinney* is still pending.(28)

In deciding that the district judge abused his discretion by reimposing the same sentence in *Daniels*, the court of appeals based its decision on three factors. The first factor was that the history of such an inflexible practice of always handing out a five year sentence in this type of situation contradicted "the judicially approved policy in favor of 'individualizing sentences'".(29) The court cited *Williams v. New York*(30) as authority for "individualizing sentences" and then quoted at length from *Williams v. Oklahoma*(31) for further authority that an inflexible sentencing practice is an abuse of discretion:

"Necessarily, the exercise of a sound discretion in such a case required consideration of all the circumstances of the crime for '(t)he belief no longer prevails that every offense in a like legal category calls for an identical punishment (without regard to the past life and habits of a particular offender).' . . . In discharging his duty of imposing a proper sentence, the sentencing judge is authorized, if not required, to consider all of the mitigating and aggravating circumstances involved in the crime." (32)

The second factor on which the Sixth Circuit based its opinion was that Congress did not intend every violation under 50 U.S.C. App. Section 462 (which appellant was convicted under) to be punished by the maximum five-year sentence which it permits. Rather, by implied legislative will Congress intended that a lesser sentence be imposed "in situations where there are appropriate mitigating circumstances." (33) This Congressional intent can be found in the wording of the statute which reads that violation shall "be punished by imprisonment for not more than five years or a fine of not more than \$10,000." (34) (emphasis added). Thus, the district court's mechanical imposition of a five-year sentence in each case defied Congress' implied legislative will to impose a lesser sentence, where appropriate.

Finally, the court found that the trial judge had failed to sentence the appellant in accordance with the basic considerations of modern penology that the Supreme Court in *Williams v. New York*, (35) had cited with much approval. The court outlined those considerations as: "(a) The reformation of the offender, (b) the protection of society, (c) the disciplining of the wrongdoer, and (d) the deterrence of others from committing like offenses." (36) Since the court of appeals did not believe that any of these goals would be served by a five-year sentence in this case, the court concluded that the trial judge had completely ignored them, thus abusing his discretion in sentencing the appellant.

With regard to the Sixth Circuit's specific grounds for finding abuse of discretion in this case, it seems that the court was not only justified in developing this new pure abuse of discretion theory but also in its application here. When the Supreme Court in *Williams v. New York* (37) discussed specific guidelines for sentencing, and again later in *Williams v. Oklahoma*, (38) it was firmly expressing itself on the subject, and while it did not make a positive command to lower federal courts to follow this guideline, it did make it apparent that it felt those considerations should be controlling. Thus, the Sixth Circuit in *Daniels* was merely following the Supreme Court's implied command to insure that these sentencing factors were being given due regard in the district courts. Its application of that implied command is justified in this particular case because of the district judge's repeated and inflexible procedure in sentencing conscientious objectors as indicated not only by the judge's own remarks, but by his record as well, (39).

By relying on *Williams v. New York* (40) and *Williams v. Oklahoma*, (41) the Court found a ground that would give some meaning to the dictum it had earlier used in *Livers v. United States*, (42) when it declared that there would be appellate review of sentencing upon "a plan showing of gross abuse." (43) Until *Daniels*, federal appellate courts were reluctant to find abuse of discretion on which to review a sentence unless they also found some possible constitutional or statutory violation. (44) The *Daniels* case may lead the way for other circuit courts to develop the heretofore undeveloped concept of pure abuse of discretion as a means for sentence review. It can do this in two ways: first, the specific grounds on which the *Daniels* court found abuse of discretion—complete dis-

regard for the particular individual involved and the general disregard of modern sentencing principles—may be used by other courts; secondly, it may lead courts into further developing the theory of pure abuse of discretion as a means for sentence review. Other possible grounds that could be used are a district judge's open hostility toward a particular defendant, or his failure to fully familiarize himself with the background of the defendant.(45)

The *Daniels* case is also unique in that the Sixth Circuit did not merely remand the case to the district court for resentencing, but instead, imposed its own sentence directly upon the appellant. This action flies directly in the face of prior procedures and case law.

The Ninth Circuit in *Penndrea v. United States*(46) outlined the procedure to be used on any remand for sentence;

"While sentences here are severe (two, twenty year sentences to run consecutively) this court is *without authority to consider any reduction or modification*. Any petition for reduction of sentence may be directed to the trial court for its consideration, pursuant to rule 35 of the Federal Rules of Criminal Procedure . . ."(47) (emphasis added).

This procedure has been rigidly followed in every case except in the present case, contempt cases,(48) and in two other minor exceptions.(49)

The *Daniels* court was justified in imposing its own sentence in this case because of the district court's repeated refusal to heed the Sixth Circuit's suggestion in not only this case but in others as well.(50) Without being able to impose its own sentence, the court of appeals would be left with the disturbing situation of reviewing and remanding a case for an obvious abuse of discretion in sentencing, but being entirely unable to correct the situation, even though it had directed its resolution. While the court, cited no authority for imposing its own sentence, proper reliance could be based either upon its supervisory power over the district courts(51) or upon Title 28 U.S.C. Section 2106.(52) Section 2106 provides;

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgments, decree or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree or order, or require such further proceedings to be had *as may be just under the circumstances*." (Emphasis added.)

It should be noted, however, that this statute is the present day version of the 1891 statute(53) which did not expressly include the provision in the 1879 statute(54) that gave federal appellate courts the power to review and sentence.(55) And, reliance on either the supervisory power or section 2106 for such action has never been expressly approved of by the Supreme Court, and thus, the Sixth Circuit's power to impose its own sentence seems somewhat questionable.

Unfortunately, for those who favor appellate review of sentencing within the federal system,(56) the approach used by the court in *Daniels* does not appear to be the ultimate solution to the problem of reviewing excessive but legal—within the statutory limits established by Congress—sentences. The case is not a satisfactory solution because *Daniels* can quite easily be limited to its unusual fact situation and because an interpretation of section 2106 or the Court's supervisory powers without express Congressional grant to review sentences might well lead to strained relations between the district courts and the courts of appeal. District judges are very jealous of their discretionary power in sentencing defendants(57) and resent any encroachment upon that power by the courts of appeals.(58) In order to preserve harmony between the district and circuit courts and to provide for general appellate review of sentencing, it appears that Congress must give express power to the courts of appeal to review sentences. With express Congressional power to review sentences, the district courts will be more tolerant of the circuit court's action in this area. Without this power, the district courts will not only question the sentence that might be imposed, but also the authority of the court to even impose such a sentence. Such a questioning of authority can only lead to the long drawn-out and time consuming procedure of remanding, resentencing, remanding, resentencing that occurred in the *Daniels* case.

Furthermore, the fact is that the circuit courts are reviewing sentences and while not imposing their own sentence after such review, they are vacating sentences that are otherwise legally imposed and remanding them for resentencing.(59) In this area courts will continue to find ways around the no-review rule, oftentimes leading themselves into inescapable corners.(60) The best solution would be for Congress to grant the power to the circuit Courts and develop realistic and effective rules regarding sentence review instead of the hodge-podge that is now in operation.(61)

Currently there is a bill in the Senate(62) (now in the Judiciary Committee) that would give the courts of appeal express power to review sentences upon an application for leave to appeal from the district courts. Under this proposed bill, if the court of appeals denies the application for leave to appeal, its decision is final. If the leave is granted, the court of appeals has full power to review the merits and impose its own sentence, provided that it cannot impose an increased sentence upon the defendant. Curiously enough the provision giving the courts of appeal the power to impose its own sentence is almost identical with the current section 2106 that has been so long interpreted as not allowing the federal appellate courts to review and impose sentences on appeal.(63) The bill is a compromise between those claiming that there should be an appeal as of right for sentence review and those who claim that any provision for appeal of sentence will flood the courts of appeal with frivolous appeals.(64) On the whole, the bill appears to be the best solution for providing for effective and efficient review of sentences.

Although this bill has been introduced in past sessions of Congress and died each time in the Senate Judiciary Committee,(65) there seems to be more hope for its passage this time because of the increased public and legislative interest in prison and judicial reform (as indicated by the reaction after the recent riot in Attica and other prisons). One of the major grievances of prisoners is the often complete disparity between sentences given to similar convicts for similar crimes.(66) Appellate review of sentencing will help eliminate such offensive disparities.

OSCAR R. LONG.

FOOTNOTES

(1) 50 U.S.C.A. App. § 462 (1967).

(2) *United States v. Daniels*, 429 F.2d. 1273 (6th Cir. 1970).

(3) FED. R. CRIM. P. 35 provides:

Correction or Reduction of Sentence. The court may correct an illegal sentence at any time. The court may reduce a sentence within 60 days after the sentence is imposed, or within 60 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 60 days after receipt of an order of the Supreme Court denying an application for a writ of certiorari.

(4) 429 F.2d 1273, 1274 (6th Cir. 1970).

(5) The district court stated that the presentence report revealed that the Appellant was "a very competent and well-behaved person and a good citizen" and "of apparent model behavior." Moreover, the district court agreed with Appellant's counsel's observations that Appellant had proved himself to be an utmost sincere and conscientious and very honest individual . . . with an "excellent" record in his "high school" and "community."

United States v. Daniels, 446 F.2d 967, 968 n. 2 (6th Cir. 1971).

(6) The full order provides:

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged the imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Twenty-five (25) months.

It is further ordered that during the twenty-five month period of probation the defendant shall perform civilian work contributing to the maintenance of the national health, safety or interest for a period of twenty-four (24) consecutive months less the time already served in confinement as determined by the Probation Department.

It is further ordered that during the period of probation the defendant shall conduct himself as a law-abiding industrious citizen and observe such conditions

of probation as the Court may prescribe. Otherwise the defendant may be brought before the Court for violation of the Court's orders.

United States v. Daniels, 446 F.2d 967, 972-73 (6th Cir. 1971).

(7) Act of March 3, 1891, ch. 517, 26 Stat. 826.

(8) Act of March 3, 1879, ch. 176 § 1, 20 Stat. 354.

(9) *See, e.g.*, United States v. Wynn, 11 F. 57 (C.C.E.D. Mo. 1882); Bates v. United States, 10 F.92 (C.C.N.D. Ill. 1881).

(10) *See, e.g.*, Rosenberg v. United States, 195 F.2d 583, 607-08 (2d Cir.), *cert. denied*, 344 U.S. 838 (1952); Beckett v. United States, 84 F.2d 731, 732-33 (6th Cir. 1936); Guerra v. United States 40 F.2d 338, 340-41 (8th Cir. 1930); Freeman v. United States, 243 F. 353, 357 (9th Cir. 1917). *But see* Ballew v. United States, 160 U.S. 187, 198-99 (1895), and Hanley v. United States, 123 F. 849, 854 (2d Cir. 1903), which suggest that the statutory powers given in the 1879 Act to circuit courts had been incorporated by reference in the 1891 Act. Federal appellate courts do, however, have the power to review a sentence of criminal contempt. *See* note 48 *infra*.

(11) *See* Gore v. United States, 357 U.S. 386, 393 (1958); Rosenberg v. United States, 344 U.S. 889, 890 (1952) (denying petition for rehearing) (Frankfurter, J., concurring); Blockburger v. United States, 284 U.S. 299, 305 (1931).

(12) Although some federal courts of appeal have previously used the language, "abuse of discretion," when remanding a case for resentencing, the *Daniels* case marks the first time that a case was remanded solely for abuse of discretion reasons. In the other cases where the language was used the court always found some specific constitutional or statutory error for basing its decision; no such basis was found here. *See, e.g.*, Leach v. United States, 334 F.2d 945 (D.C. Cir. 1964), and United States v. Wiley, 278 F.2d 500 (7th Cir. 1960), where the abuse of discretion language was used, but the courts in fact based their decision on more specific findings. *See* note 18 and accompanying text, *infra*. The states are divided on whether there should be any appellate review of sentences. Even those that do allow appellate review are split as to how they provide for it. Most of the states providing for such review have express statutory provisions but a small minority have allowed review through judicial interpretation of general jurisdictional statutes. *See* Note, *A Plea for Appellate Review of Sentences*, 32 OHIO ST. L.J. 410 nn. 52 & 53 (1971).

(13) Scott v. United States, 419 F.2d 264 (D.C. Cir. 1969); LeBlanc v. United States, 391 F.2d 916 (1st Cir. 1968); Thomas v. United States, 368 F.2d 941 (5th Cir. 1966). *But see*, Gollaher v. United States, 419 F.2d 520 (9th Cir. 1969); Williams v. United States, 273 F.2d 469 (10th Cir. 1959). Also somewhat related to this area is the problem of a harsher sentence being imposed after a new trial won on a prior successful appeal. *See, e.g.*, North Carolina v. Pearce, 395 U.S. 711 (1969); Marano v. United States, 374 F.2d 583 (1st Cir. 1967). *See also* Aplin, *Sentence Increases on Retrial After North Carolina v. Pearce*, 39 U. CIN. L. REV. 427 (1970).

(14) *See, e.g.*, Townsend v. Burke, 334 U.S. 736 (1948) (false information); United States v. Weston, 448 F.2d 626 (9th Cir. 1971) (improper information); United States v. Malcolm, 432 F.2d 809 (2d Cir. 1970) (false information); United States v. Lewis, 392 F.2d 440 (4th Cir. 1968) (misconception of law); United States v. Myers, 374 F.2d 707 (3d Cir. 1967) (false information), and Smith v. United States, 223 F.2d 750 (5th Cir. 1955) (false information).

(15) *See, e.g.*, United States v. Wiley, 278 F.2d 500 (7th Cir. 1960); Eviere v. United States, 249 F.2d 293 (10th Cir. 1957).

(16) *See* O'Brien v. United States, 376 F.2d 538 (1st Cir. 1967), when defendant was convicted of intentionally failing to carry his draft card because he had burned it in protest over the Viet Nam War. The court of appeals upheld the conviction but remanded the case for resentencing because the six year sentence was imposed, not so much for the actual failure to carry the draft card, but because of the defendant's views on the war. Thus, the harsh sentence penalized the defendant for exercising his right of free speech.

(17) *See* Weems v. United States, 217 U.S. 349 (1910); Ralph v. Warden, 438 F.2d 786 (4th Cir. 1970).

(18) 278 F.2d 500 (7th Cir. 1960).

(19) 334 F.2d 945 (D.C. Cir. 1964). *See also* Jones v. United States, 327 F.2d 867 (D.C. Cir. 1963); Peters v. United States, 307 F.2d 193 (D.C. Cir. 1962).

(20) 334 F.2d at 945.

(21) 185 F.2d 807 (6th Cir. 1950).

(22) *Id.* at 809.

(23) 427 F.2d 449 (6th Cir. 1970), decided June 15, 1970.

(24) 429 F.2d 1273 (6th Cir. 1970), decided July 30, 1970.

(25) 434 F.2d 740 (6th Cir. 1970); decided Nov. 19, 1970. The case was later dismissed on appeal to the Supreme Court, 402 U.S. 970 (May 17, 1970). Refer to, the earlier cases of United States v. Mullory, 412 F.2d 421 (6th Cir. 1969), *rev'd on other grounds*, 398 U.S. 410 (1970); and United States v. Pratt, 412 F.2d 426 (6th Cir. 1969), *cert. denied*, 401 U.S. 1012 (1971), For a later case in which the Sixth Circuit rejected the "remand for resentencing approach" of *Daniels* and *Griffin* refer to United States v. Dudley, 436 F.2d 1057 (6th Cir. 1971). Other circuits have also rejected this approach of sentence review, even where they felt the sentence was excessive. *See, e.g.*, United States v. Sanders, 435 F.2d 683 (5th Cir. 1970); United States v. Slawson, 432 F.2d 109 (10th Cir. 1970); United States v. Fallon, 407 F.2d 621 (7th Cir.), *cert. denied*, 395 U.S. 908 (1969). For a general view of how Selective Service violators are being sentenced *see*: Note, *A Judicial Wheel of Fortune*, 5 COLUM. J. L. & SOC. PROB. 164 (1969); Solomon, *Sentences in Selective Service and Income Tax Cases*, 52 F.R.D. 481 (1970).

(26) In *Griffin*, the appellant was in the same position as the appellant in *Daniels*, since he had been granted a conscientious objector status but would not obey an order of the draft board, but would obey an order of a judicial body directing him to do the same work as did the draft board. In *McKinney*, while the appellant had not been granted a conscientious objector status, he was at all times willing to serve in a noncombat capacity.

(27) *See* note 25 *supra*.

(28) On appeal *McKinney* was remanded by order without opinion for resentencing in light of *McDaniels*. United States v. McKinney, No. 71-1063 (6th Cir. Dec. 17, 1971).

(29) United States v. Daniels, 446 F.2d 967, (6th Cir. 1971).

(30) 337 U.S. 241 (1949).

(31) 358 U.S. (1959).

(32) 446 F.2d at 971.

(33) *Id.* at 972.

(34) U.S.C.A. App. § 462 (1965).

(35) 337 U.S. 241 (1949).

(36) *Id.* at 248 n. 13.

(37) 337 U.S. 241 (1949).

(38) 358 U.S. 576 (1959).

(39) 446 F.2d at 969.

(40) 337 U.S. 241 (1949).

(41) 358 U.S. 576 (1959).

(42) 185 F.2d 807 (6th Cir. 1950).

(43) *Id.* at 809.

(44) *See* text at pp. 197-99 *supra*.

(45) In fact, just recently the Fourth Circuit in United States v. Wilson, 450 F.2d 495 (4th Cir. 1971), remanded the case for resentencing where the three year sentence imposed there "may have been the product of sheer inadvertence" [*id.* at 498] on the part of the trial judge, in that he may have overlooked the fact that the defendant could have been sentenced under the Federal Youth Correction Act, 18 U.S.C. §§ 5005-5026 (1950). That Act provides for special consideration in sentencing youths between the ages of 22 and 26. Since the defendant was within that age group and there was no showing that the trial judge considered it when sentencing him the court of appeals vacated the sentence and remanded the case.

(46) 275 F.2d 325 (9th Cir. 1960).

(47) *Id.* at 330 n 10.

(48) The contempt cases represent a special area of criminal justice and administration. Appellate courts have traditionally had power to review sentences given for contempt because the imposition of a contempt citation is purely within

the discretionary power of the district courts and Congress has declared no minimum or maximum standards to be applied. *See* *Green v. United States*, 365 U.S. 165, 188 (1958). Thus, appellate courts have a special responsibility in this area to see that sentences are properly imposed and on several occasions they have exercised this responsibility to reduce contempt sentences on their own where they felt such action was required. *See, e.g.,* *Yates v. United States*, 356 U.S. 363 (1958); *Nilva v. United States*, 352 U.S. 385 (1957); *United States v. United Mine Workers*, 330 U.S. 258 (1947); *Schnurman v. United States*, 379 F.2d 92 (D.C. Cir. 1967); *United States v. Levine*, 288 F.2d 272 (2d Cir. 1961).

(49) In two cases of unusual but similar circumstances the Court of Appeals for the District of Columbia imposed a sentence of life imprisonment in lieu of capital punishment. *Coleman v. United States*, 357 F.2d 563 (D.C. Cir. 1965) (*en banc*); *Frady v. United States*, 348 F.2d 84 (D.C. Cir.), *cert. denied*, 382 U.S. 909 (1965). However, the court in both of these cases clearly limited their decisions to the particular facts.

(50) *United States v. McKinney*, 427 F.2d 449 (6th Cir. 1970); and *United States v. Griffin*, 434 F.2d 740 (6th Cir. 1970).

(51) The Supreme Court does have some supervisory power over the administration of criminal justice in the federal system, but this power has generally been limited to the formulation of rules of evidence. *See* *McNabb v. United States*, 318 U.S. 332 (1943). Historically, the Court has declined to extend that power to the review of sentences imposed in the district courts except in the contempt cases. For a further discussion of the supervisory power in this area *see*: NOTE, *What is the Proper Scope of Appellate Review of Sentencing* 75 HARV. L. REV. 416, 417 (1961); NOTE, *Appellate Review of Sentencing Procedure*, 74 YALE L.J. 379, 385 (1964).

(52) U.S.C. § 2106 (1964).

(53) *See* note 7 *supra*.

(54) *See* note 8 *supra*.

(55) That Act in section 3 provided that: in case of an affirmance of the judgment of the District Court, the Circuit Court shall proceed to pronounce final sentence and to award execution thereon; but if such judgment shall be reversed, the Circuit Court, may proceed with the trial of said cause *de novo* or remand the same to the District Court for further proceeding Act of March 3, 1879, 20 Stat. 354.

(56) *See, E.g., Appellate Review of Sentences, A Symposium at the Judicial Conference of the United States Court of Appeals for the Second Circuit*, 32 F.R.D. 249, 27 (1962) (remarks of Judge Sobeloff); Mueller, *Penology on Appeal: Appellate Review of Legal but Excessive Sentences*, 15 VAND. L. REV. 671 (1962); Sobeloff, *The Sentence of the Court: Should There be Appellate Review?*, 41 A.B.A.J. 13 (1955); Tydings, *Ensuring Rational Sentences—The Case for Appellate Review*, 53 J. AM. Jud. Soc'y 68 (1969). *But see* Brewster, *Appellate Review of Sentences*, 40 F.R.D. 79 (1965).

(57) *See* *United States v. Daniels*, 319 F. Supp. 1061 (E.D. Ky. 1970), in which the district judge who sentenced and resentenced the defendant in this case discusses his broad discretionary power in sentencing and how it is unique to the district court.

(58) *See* *United States v. Wiley*, 184 F. Supp. 679, 688 (N.D. Ill. 1960), in which the district judge that had originally sentenced the defendant in *United States v. Wiley*, 278 F.2d 500 (7th Cir. 1960) reimposed the same sentence he had given before the Seventh Circuit remanded the case, stating that he felt the court of appeal's action in remanding the case for resentencing was "an uncertain and dangerous precedent." However, he later suspended the sentence "out of respect for the Court of Appeals," 184 F. Supp. at 688.

(59) *See* text at pp. 197-99 *supra*.

(60) *See Appellate Review of Sentences, a Symposium at the Judicial Conference of the United States Court of Appeals for the Second Circuit*, 32 F.R.D. 249 (1962).

(61) Congress has in fact recognized that there is a need for appellate review of sentences in certain circumstances. Under the Organized Crime Act of 1970

there is an express provision for appellate review of any sentence imposed under the dangerous offenders section (18 U.S.C.A. § 3575 (1970)) of that Act. The review provision, 18 U.S.C.A. § 3576 (1970) allows the court of appeals to review the sentence imposed under section 3575 to determine "whether the procedure employed was lawful, the finding made were clearly erroneous, or the sentencing court's discretion was abused."

(62) S. 2228, 92d Cong., 1st Sess. (1971). The American Bar Association has also proposed a bill to provide for the appellate review of sentences. See ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCING, (App. Draft 1968).

(63) Proposed section 3742 (c) of S. 2228, 92d Cong., 1st Sess. (1971).

(64) See Brewster, *Appellate Review of Sentences*, 40 F.R.D. 79, 36-7 (1965). But cf. Frankel, *The Sentencing Morass, and a Suggestion for Reform*, 3 CRIM. L. BULL. 365 379 (1967).

(65) The House hasn't proposed such legislation for review of sentences; however, it seems that it may act in this area. Letter from William J. Keating to author, November 30, 1971.

(66) S. KADISH & M. PAULSEN, CRIMINAL LAW AND ITS PROGRESSES, 1287 (2d ed. 1969): D'Esposito, Jr., *Sentencing Disparity; Causes and Cures*, 60 J. CRIM. L.C. AND P.S. 182 (1969).

Mr. McCLELLAN. Mr. President, I am glad to join with the distinguished Senator from Nebraska (Mr. HRUSKA) today in the introduction of S. 716, which would authorize appellate review of excessive sentences. In the last few years, he and I have labored hard together in the criminal justice field on a number of proposals, often, I am pleased to note, successfully. I am hopeful that this idea, too, so long championed by the Senator, can someday become law.

Mr. President, my own interest in the need for appellate review of sentences began with my experience in the investigation of organized crime as part of the work of the Permanent Subcommittee on Investigations. I know from long experience what it is to assault entrenched criminal syndicates only to see years of dedicated investigation obtaining less than maximum results.

One of the worst gansters we uncovered in my years as chairman of the Senate Labor-Rackets Investigations was Anthony Corallo. A captain in one of New York's five mafia "families," Corallo won his nickname of "Tony Ducks" because he always managed to duck the law. One exception was a 1941 narcotics conviction, which, however, got him only 6 months. Our hearing record showed how Corallo helped Jimmy Hoffa gain control of New York City's 140,000 Teamsters by bringing in 40 hoodlums—with records of 178 arrests and 77 convictions of crimes ranging from extortion to murder—to intimidate the rank-and-file membership.

By 1962, Corallo was convicted under the Federal antiracketeering statute—18 U.S.C. § 1952. He had conspired to pay a \$35,000 bribe to a New York judge and an assistant U.S. attorney to "fix" a friend's sentence for a \$100,000 bankruptcy fraud. Yet when Corallo's sentence was handed down, he drew only 2 years, instead of the maximum 5-year term—despite his public record as a vicious racketeer. Of the 2 years, he actually served only 18 months, and in 1968, Federal investigators publicly stated, Corallo and his gangster associates were once again controlling at least seven of the 56 Teamsters locals in the New York area, forcing millions of consumers to pay hidden tribute.

In June 1968, Corallo stood before the same Federal judge, this time convicted under the same Federal antiracketeering statute for loan-sharking a financially pressed New York City water commissioner, Corallo, through the loan-shark deal, had been able to arrange and share a \$40,000 kickback on a city contract. Nevertheless, although he specifically recalled the 1962 sentence he had given Corallo, the judge gave Corallo only 3 years, instead of the maximum 5-year sentence.

It was instances such as this that lead me to introduce and fight for the Organized Crime Control Act of 1970, title X of which authorized increased sen-

tences in racketeer prosecutions and appellate review by the prosecution as well as the defense reexamine the imposition or the failure to impose such sentences—18 U.S.C. § 3576. And I note that the distinguished Senator from Nebraska supported me in this effort.

Indeed, I am proud that my efforts in behalf of title X that also merited the support of such distinguished bodies as the American Bar Association—testimony of Edward L. Wright, hearings before Subcommittee No. 5, Committee on the Judiciary, House of Representatives 91st Congress, second session, serial No. 27, pages 696-701, 1970—and that it is now one of the tools available to aggressive prosecutors in the fight against organized crime.

Nevertheless, I recognize that appellate review has another dimension. Statistics made available to the Subcommittee on Criminal Laws and Procedures by the Administrative Office of the U.S. Courts and analyzed by the National Institute of Law Enforcement indicate the existence of a shocking sentence disparity. The studies made available to us, in broad outline, indicated the following:

The study found that variations in sentencing, both in type and length, among the Federal district courts for a series of designated offenses were substantial. Specifically, the analysis found that the type of sentence—prison or probation—given defendants and the length of sentence were not consistent among districts for all crimes analyzed.

Another assumption, verified by the study, is that for the Federal crimes, prior record has the most effect on variations in sentencing among the defendant characteristics available for study. In particular, the analysis found that the type of sentence given defendants with no prior record varies as significantly among the districts as that for defendants with prior prison records, while the variation among the districts was significantly less for defendants with prior probation and suspended records and prior juvenile records.

Nevertheless, the length of sentence given defendants with no prior record, prior prison record, and prior probation and suspended record was not consistent among the districts for nearly every crime analyzed. The length of sentence given defendants with prior juvenile records also lacked consistency among the districts for half of the crimes analyzed.

The study found for the Federal crimes studied that nationwide, regardless of circuit, defendants with certain background characteristics were more likely to receive prison sentences than others, for nearly every crime analyzed.

Men received prison sentences more often than women. In fact, the average prison percentages for men were nearly double those for women in eight of the ten crimes analyzed.

Those over age 35 had higher prison percentages than those between 21 and 35, which in turn had higher prison percentages than those under 21.

Defendants with appointed counsel had higher prison percentages than defendants with private counsel.

Black defendants had higher prison percentages than white defendants. The black and whites varied from 2 to 23 percentage points for all but transportation of forged securities and income tax violation, where the differences were 1 and 5 percent in the other direction.

Mr. President, I know that differences of age and sex may warrant some differences in treatment at the time of sentence. But it is difficult to justify disparity based on poverty or race.

Mr. President, the bill that the Senator from Nebraska and I have introduced today squarely raises the issue whether or not some sort of appellate review similar to that now provided by 18 U.S.C. § 3576 ought not be extended across the board in Federal prosecutions. In its present form, S. 716 would be limited to review in behalf of the defendant and sentences could be reviewed only for excessiveness. I note that this is the form in which it passed the Senate as S. 1540 in the 90th Congress, and I support it as far as it goes.

But I have joined in its introduction primarily with the idea that it may serve as a vehicle for discussion. Before I could support its enactment I would want to make its provisions more even handed. They should be extended to provide for

prosecutor appeal and the increase of inadequate sentences. Our hearings on the bill, scheduled to begin soon, should consider these amendments carefully.

Neither of these two extensions would be fundamentally at odds with the bill as the Senator from Nebraska has supported it in the past, and I understand he would be receptive to considering its processing with these goals in mind.

I would also want to consider if there could not be some safeguards built into it to screen out frivolous appeals. We must be careful that we do not overload our courts. At the same time, we must keep our perspective. We must not refuse to do justice for a lack of courts. Court congestion is a reason to move with care. It is not a reason to fail to act.

Mr. President, my good friend and colleague, the distinguished Senator from Nebraska, is to be congratulated on his perseverance in behalf of justice and fairness in sentencing in the criminal justice field.

I am proud to associate myself with his efforts.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., February 23, 1973.

Hon. JOHN L. McCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedure,
U.S. Senate, Washington, D.C.

DEAR SENATOR McCLELLAN: The Committee on the Administration of the Criminal Law of the Judicial Conference has been in session over the last three days in its continuing study of the Brown Commission Report and your bill, S. 1, the Criminal Justice Codification Revision and Reform Act of 1973. During this meeting, it came to the attention of that Committee, chaired by Federal District Court Judge Alfonso J. Zirpoli, that your Committee is planning hearings on March 6, 7, and 8, 1973, on the subject (among others) of appellate review of sentences imposed in a limited category of federal criminal cases proposed in S. 1.

After conferring on this subject with the Chairman of the Advisory Committee on Criminal Rules, it was the consensus that a proposed new Rule 35 should be brought to your attention since it suggests an alternative to appellate review of sentences, namely, the designation of a rotating panel of three United States district judges in each circuit who would review sentences on petition. I enclose a copy of this proposed rule.

I should point out that at this stage, the draft rule is only a proposal that will be circulated to the national bench and bar for comment as soon as it is printed by the Government Printing Office early in March. In accordance with the usual procedure, comments will ultimately be evaluated by the rules committees before any further action is taken. It was thought that this should be brought to your attention since the proposed rule is germane to the subject of your hearing.

Sincerely,

ROWLAND F. KIRKS, *Director*.

Enclosure.

RULE 35.—CORRECTION OR REDUCTION OF SENTENCE

(a) *Illegal Sentence.* The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within 120 days after the imposition of the sentence ~~the time provided herein for the reduction of sentence.~~

(b) *Motion to Reduce Sentence.* ~~The court may~~ A motion to reduce a sentence may be made within 120 days after the sentence is imposed either originally or upon revocation of probation. ~~or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. An appeal shall not extend the time within which a motion to reduce sentence may be made. The provisions of rule 38(a)(2) shall not apply to a motion to reduce sentence.~~

(c) Review of Sentence.

(1) *Motion for Review.* Within 30 days after the denial of an application made under subdivision (b) of this rule for the reduction of a sentence which may result in imprisonment for 2 years or more, the defendant may file a motion with the clerk of the district court for a review of the sentence. The motion may be made while an appeal is pending.

(2) *Sentence Review Panel.* There shall be in each district court a sentence review panel. The panel shall be composed of three district judges of the circuit who shall be designated and, if not already members of the court, assigned to the district court for that service by the chief judge of the circuit pursuant to 28 U.S.C. § 292(b) or § 294(c). The members of the panel shall serve for such periods of time as the chief judge of the circuit may designate. The same district judge may be designated and assigned to the sentence review panels of two or more district courts of the circuit at the same time. A district judge of the circuit may be designated and, if necessary, assigned by the chief judge of the circuit as an alternate member of the panel to sit in place of a regularly designated member whenever the latter was the sentencing judge in a case under review or is otherwise unable to sit. The district judge who is first in precedence shall preside over the panel.

(3) *Procedure of Panel.* When a motion is filed for the review of a sentence, the clerk shall forthwith notify the presiding judge of the sentence review panel. The presiding judge shall promptly cause the panel either individually or in joint session to review the sentence. The panel shall consider the papers on file in the case in the district court, including the presentence report, a report of a diagnostic facility, and any other documents which were before the sentencing judge. The panel may direct the preparation of a transcript of all or part of the testimony and other proceedings in the case if required for its consideration. The panel may, in its discretion, permit the attorney for the government and the defendant or his counsel or both to appear before it and present oral argument or file written briefs or do both.

(4) *Powers of Panel; Finality of Decision.* If the panel deems that a sentence under review is excessive, it shall modify or reduce it; otherwise it shall confirm the sentence. The order of the panel modifying or reducing the sentence and amending the judgment of the court accordingly or confirming the sentence, as the case may be, shall be filed in the office of the clerk of the district court and entered in his docket. The order of the panel shall be final and not subject to further review or appeal.

RULE 35.—CORRECTION OR REDUCTION OF SENTENCE**ADVISORY COMMITTEE NOTE**

Rule 35 is amended to provide a procedure for the review of sentence thought by a defendant to be excessive. The review is to be before a panel of three district judges designated by the chief judge of the circuit. The panel is empowered to modify or reduce a sentence found to be excessive or to confirm a sentence found not to be excessive. The review panel is not empowered to increase a sentence.

Subdivisions (a) and (b) of the proposed rule remain basically the same with two exceptions: A change is made to provide that a motion to reduce a sentence must be made within 120 days, a period not extended (as under the current rule) by the taking of an appeal. A change is also made to make clear that a sentence of imprisonment need not be stayed, under rule 38(a)(2), pending the decision on the motion to reduce a sentence. The objective is to achieve the prompt resolution of any issue relating to the propriety of a sentence. Thus the 120 days runs from imposition of sentence rather than 120 days from the decision on an appeal from the conviction. Both an appeal and a motion to reduce sentence can be taken at the same time. This is made explicit in subdivision (c)(1). Because the proposed rule will make possible the prompt resolution of the sentence issue, rule 38(a)(2) which mandates a stay of a sentence of imprisonment is not made applicable to a motion to reduce a sentence.

Subdivision (c) is entirely new. It provides a procedure for reviewing a trial judge's refusal to grant a reduction of sentence.

Providing for a review of a sentence is recommended by the American Bar Association Standards Relating to Appellate Review of Sentences (Approved

Draft, 1968). Section 1.2 of the ABA Standards Relating to Appellate Review of Sentences articulates the purposes of a sentence review procedure (pp. 7-8) :

"The general objectives of sentence review are :

(i) To correct the sentence which is excessive in length, having regard to the nature of the offense, the character of the offender, and the protection of the public interest ;

(ii) To facilitate the rehabilitation of the offender by affording him an opportunity to assert grievances he may have regarding his sentence ;

(iii) To promote respect for law by correcting abuses of the sentencing power and by increasing the fairness of the sentencing process ; and

(iv) To promote the development and application of criteria for sentencing which are both rational and just."

For a discussion of these objectives, see the commentary to § 1.2 at pages 21-31.

Further discussion of the advantages of sentence review is found in Dix, *Judicial Review of Sentences: Implications for Individual Disposition*, 1969 *Law and the Social Order* 369, 369-371 ; Hruska, *Appellate Review of Sentences*, 8 *Am. Crim. L.Q.* 10 (1969) ; The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* 25 (1967) ; Note, *Appellate Review of Primary Sentencing Decisions: A Connecticut Case Study*, 69 *Yale L.J.* 1453, 1461-1462 (1960) ; *Appellate Review of Sentences*, A Symposium at the Judicial Conference of the United States Court of Appeals for the Second Circuit [1962], 32 *F.R.D.* 249 (1963), Remarks of Judge Kaufman, pp. 260-261.

For discussions of objections to appellate review of sentencing, see Dix, *Judicial Review of Sentences: Implications for Individual Disposition*, 1969 *Law and the Social Order* 369, 371-372 ; The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* 26 (1967) ; *Appellate Review of Sentences*, A Symposium at the Judicial Conference of the United States Court of Appeals of the Second Circuit [1962], 32 *F.R.D.* 249 (1963), Remarks of Judge Walsh, p. 276 ; Brewster, *Appellate Review of Sentences* [1965], 40 *F.R.D.* 79 (1967).

Many states now provide for some form of judicial review of sentences. See, e.g., *Ariz. Rev. Stat. Ann.* § 13-1717 (1956) ; *Conn. Gen. Stat. Ann.* §§ 51-194-51-196 (Supp. 1965) ; *Fla. Stat.* § 932.52 (1969) ; *Hawaii Rev. Laws* § 212-14 (Supp. 1965) ; *Ill. Ann. Stat. ch. 38*, § 117-3(e) (Smith-Hurd 1964) ; *Iowa Code Ann.* § 793.18 (1950) ; *Me. Rev. Stat. Ann.*, tit. 15, §§ 2141-2144 (Supp. 1966) ; *Md. Ann. Code art. 26*, §§ 132-138 (1966) ; *Mass. Gen. Laws Ann. ch. 278*, §§ 28A-28D (1959) ; *Neb. Rev. Stat.* § 29-2308 (1964) ; *N.Y. Crim. Proc. Law* § 450.30 (1971) ; *Ore. Rev. Stat.* §§ 138.050, 168.090 (1970) ; *Tenn. Code Ann.* § 40-2711 (1955). The United States military courts also have provisions for the review of sentence, 10 *U.S.C.* §§ 860, 862(b), 863-864, 865(a), 866 (a)-(c), 869 (1964). For further discussion of the availability of review, see *American Bar Association Standards Relating to Appellate Review of Sentences* 13-15 (Approved Draft, 1968).

Subdivision (c) (1) conditions the right to a review of sentence on three things.

First, the sentencing judge must have denied a motion to reduce the sentence under subdivision (b). The sentencing judge is thus given the opportunity to first review the sentence in light of the issue raised by the defendant.

Second, the right of review is limited to those defendants whose sentence may result in imprisonment for two years or more. Contrast the conclusion in *ABA Standards Relating to Appellate Review of Sentences* 18-20 (Approved Draft, 1968). See also discussion of § 3.4 in *ABA Standards Relating to Appellate Review of Sentences*, mainly pp. 61-62 (Approved Draft, 1968). The two-year minimum conforms to that of at least one state which provides for review of sentences. See *Md. Ann. Code, art. 26*, § 132 (1966). Of the states providing by statute for the review of sentence, only one has a minimum sentence of greater than two years. See *Mass. Gen. Law Ann. ch. 278*, § 28A (1959), providing for a sentence of more than five years to the state reformatory for women. However, Massachusetts also provides for the right of review for all sentences to the state prison. Similarly, see *Me. Rev. Stat. Ann.*, tit. 15, § 2141 (Supp. 1966). Several

other states have a one-year minimum. See, e.g., Conn. Gen. Stat. Ann. § 51-195 (Supp. 1965); 10 U.S.C. § 866(b) (1964) (United States Military Courts). For a criticism of having two classes of convicted persons, see Note, Appellate Review of Primary Sentencing Decisions: A Connecticut Case Study, 69 Yale L.J. 1453, 1464 (1960).

Third, the defendant must make his motion to review within thirty days after a denial of a motion to reduce the sentence made under the provisions of subdivision (b).

Subdivision (c) (2) prescribes the manner for selecting the review panel. The panel consists of three district judges with an additional district judge as an alternate. The alternate will make it possible to exclude from the panel the judge who imposed the sentence being reviewed.

Using a panel of district judges permits those judges most experienced with sentencing to participate in the review process. It thus avoids, as a major objection to review of sentences, the argument that appellate judges are not qualified for the task. See, e.g., Appellate Review of Sentences, A Symposium at the Judicial Conference of the United States Court of Appeals for the Second Circuit [1962], 32 F.R.D. 249 (1963), Remarks of Judge Walsh, pp. 285-286. 28 U.S.C. § 292(b) and § 294(c) are incorporated, by reference, into the rule to emphasize the fact that they are the established procedure for appointing a judge from one district to serve in another district or for appointing a senior judge to serve in a district. These provisions are needed because many districts lack the necessary three district judges to constitute the review panel.

Subdivision (c) (3) prescribes the procedures to be followed by the panel. There is no requirement that the panel hold a formal meeting. It is only required that each member of the panel review the sentence. The need for meetings will vary.

The panel is required to consider the papers on file in the district court which were available to the sentencing judge including the presentence report, a report of a diagnostic facility (such as that following a commitment under 18 U.S.C. § 4208(b) or § 5010(e)), and any other written data relevant to sentencing. The panel, at its discretion, may also order the preparation of the transcript of the trial or other proceedings held in the case. The objective is to present to the review panel all of the sentencing information available to the sentencing judge. See discussion, ABA Standards Relating to Appellate Review of Sentences 42-45 (Approved Draft, 1968). The existing rule has been interpreted to impose a limitation of the inquiry to the factual record. See *Semet v. United States*, 422 F. 2d 1269 (10th Cir. 1970). The proposed rule contemplates that review will be limited to the factual information in the written record (transcripts, presentence reports, etc.).

The panel is given discretion to hear oral argument and to accept a written brief. The proposed rule is not explicit on the right of a defendant to be represented by counsel during a sentence review procedure. The issue of the constitutional right to counsel is left to future court determination. Compare *Consiglio v. Warden, State Prison*, 153 Conn. 673, 220 A. 2d 269 (1966), ruling that review of sentence, as provided under the Connecticut statute, is a critical stage; and *United States v. Birnbaum*, 421 F. 2d 993 (2d Cir.), cert. denied 397 U.S. 1044, reh. denied 398 U.S. 944 (1970), holding that constitutional rights are not abridged by absence of defendant's counsel on review of a refusal to grant probation. The Connecticut situation is distinguishable from proposed rule 35 in that Connecticut allows the sentence review panel to increase the sentence originally imposed. Proposed rule 35 allows only a reduction and is therefore not as critical a stage as is the Connecticut sentence review. See *United States ex rel. Smith v. Hendrick*, 260 F. Supp. 235 (E.D. Pa. 1966); aff'd 378 F. 2d 373 (1967). Should the review panel request briefs or oral argument, it would seem obviously wise to ensure that the defendant has the advice of counsel. Proposed rule 35 is intended to leave this in the discretion of the sentence review panel in cases where defendant's trial counsel does not carry through with the motion to review sentence. Because a defendant has the right to counsel at the original sentencing, he is thus provided assistance in marshaling factual information and argument

relevant to sentencing which will be a matter of record and available to the review panel. Trial counsel also has an opportunity to inform defendant of his right to review of the sentence imposed by the trial judge.

The rule does not attempt to specify what evidence is admissible on the issue of the propriety of the sentence under review. Consider Proposed Rules of Evidence for United States Courts and Magistrates, rule 1101 (d) (3) (Revised Draft 1971), which recommends that the rules of evidence should not apply to sentencing. For interpretation of existing law, see Proposed Rules of Evidence for United States Courts and Magistrates, p. 153 (Revised Draft 1971).

The rule does not require either the sentencing judge or the review panel to give written reasons for the sentence imposed. There is a question as to the usefulness of written reasons for imposing a sentence. The requirement has been criticized as providing unhelpful opinions. See Note, Appellate Review of Primary Sentencing Decisions: A Connecticut Case Study, 69 Yale L.J. 1453, 1466-1475 (1960); Halperin, Appellate Review of Sentence in Illinois—Reality or Illusion?, 55 Ill. B.J. 300, 301 (1966); and Appellate Review of Sentences, A Symposium at the Judicial Conference of the United States Court of Appeals of the Second Circuit [1962], 32 F.R.D. 249 (1963), Remarks of Judge Walsh, pp. 282-283. In the view of the Advisory Committee, the contribution made by requiring written reasons is not sufficient to justify the cost in time and money which would be imposed upon the sentencing and sentence review processes. The decision as to when to write an opinion is left to the discretion of the sentencing judge and the review panel. See ABA Standards Relating to Appellate Review of Sentences 50 (Approved Draft, 1968).

Subdivision (c) (4) gives the reviewing panel the power to modify or reduce the sentence under review if the panel deems the sentence to be excessive. In all other cases, the panel must confirm the sentence. The panel is thus without authority to increase the sentence being reviewed. The reasons for not allowing the sentence to be increased include: (1) There seems to be no inherent relationship between those defendants who deserve an increase and those who are likely to take an appeal, Compare Van Alstyne, In Gideon's Wake: Harsher Penalties and the "Successful" Criminal Appellant, 74 Yale L.J. 606, 621-622 (1965). (2) A stigma of unfairness may attach to the review system, outweighing the value gained in the few cases in which an increased sentence is justified. See Report of the Interdepartmental Committee on the Court of Criminal Appeal, Meador Report, Appendix C, p. 142, ABA Standards Relating to Appellate Review of Sentences (Approved Draft, 1968). (3) The power to increase sentence upon appeal by defendant might frustrate the objective of rehabilitation. (4) The sixty years of experience in England with the power to increase sentences led to the conclusion that it does not serve a needed function. See Meador Report, Appendix C, pp. 144 and 157 of ABA Standards Relating to Appellate Review of Sentences (Approved Draft, 1968). (5) There is some question as to whether such a provision would be constitutional. See *Kohlfuss v. Warden*, 149 Conn. 692, 183 A. 2d 626, cert. denied, 371 U.S. 928 (1962); and *Hicks v. Commonwealth*, 345 Mass. 89, 185 N.E. 2d 739 (1962), cert. denied, 374 U.S. 839 (1963), where the constitutionality of two state review statutes was questioned and yet the statutes withstood the attack. But compare *United States ex rel. Hetenyi v. Wilkins*, 348 F. 2d 844, 859-860 (2d Cir. 1965), cert. denied, 383 U.S. 913 (1966); *People v. Henderson*, 60 Cal. 2d 482, 35 Cal. Rptr. 77, 386 P. 2d 677 (1963). Also see Appellate Review of Sentences, Hearings on S. 2722 Before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 89th Cong., 2d Sess. 106 (1966) (Statement of Professor George). These arguments are discussed in ABA Standards Relating to Appellate Review of Sentences 57-63 (Approved Draft, 1968). To ensure against a flood of frivolous claims, the proposed rule limits the right of review to sentences of two years or more rather than to try to deter frivolous appeals by the threat of an increased sentence. See ABA Standards Relating to Appellate Review of Sentences 61-62 (Approved Draft, 1968).

The rule does not provide for the remand of the case to the sentencing court. To remand a case would slow down the procedure of review. If a sentence is found to be excessive, the panel should correct the defect and issue the final order.

The rule does not impose a duty on the sentencing judge to notify the defendant of his right to move for reduction or review of sentence.

1972 SENTENCING STUDY, SOUTHERN DISTRICT OF NEW YORK

INTRODUCTION

Reliable information concerning sentencing practices in the Federal courts is woefully inadequate. Some generalizing figures are available through Reports of the Administrative Office of the United States Courts, but these are of limited utility. Recently, more particularized information has become available through the statistical study published by the Federal Bureau of Prisons for the fiscal years 1969-1970, which provides some new insights into the sentencing disparities between individual districts. Within each Federal district, however, there is no regular compilation of data upon which one can assess the fairness of the sentencing process. In the Spring of 1972, the United States Attorney's Office for the Southern District of New York undertook to conduct a detailed case-by-case study of all sentences imposed in the district over the course of a six-month period. The following report is largely based on an analysis of all such sentences imposed during the period from May 1, 1972, through October 31, 1972. The information was supplied by individual Assistant U. S. Attorneys in charge of the respective cases and therefore is subject to possible human error, but is believed to be essentially complete. The study covers the sentencing of 645 individual defendants. Although this is a good sample for most purposes, in the case of the analysis of sentencing patterns for specific violations or the action of specific judges, the sample sometimes becomes quite small, so that one cannot rely entirely on generalizations drawn from some of the detailed data. Nonetheless, the overall results are significant and the conclusions essentially sound.

The United States Attorney's Office is particularly indebted to three of its talented research assistants, Mrs. Poppy Quattlebaum, Federico Virella, and Richard Weisberg, for their many hours of hard work in putting together the data on which this study is based.

It should be emphasized that the recommendations set forth at the end of this study are made on behalf of the United States Attorney's Office for the Southern District of New York and do not necessarily represent the views of the Department of Justice.

OTHER RECENT STUDIES

In June, 1972, the National Institute of Law Enforcement and Criminal Justice submitted a report to the U.S. Senate Subcommittee on Criminal Law and Procedure (McClellan Committee) reporting on sentencing variations in the Federal Courts, based on a computerized study of sentences imposed during the four-year period from 1967 to 1970. The Institute concluded that there are "considerable variations in sentence length" in the U.S. District Courts which occur both between districts and within districts. Part of the study focused on variations in sentences according to the race of the defendant. Among the more remarkable findings was that 28% of white defendants convicted of interstate thefts were sentenced to prison during the four-year period, while 48% of black defendants convicted of the same offense were sentenced to prison. For postal theft, the imprisonment rate was 39% for white defendants and 48% for black defendants. In other categories of offenses the variation between racial groups was not so significant, although the study concluded:

"The percent of Black defendants given prison sentences is higher than the percent of White defendants, for all crimes except Income Tax Violation; the percent of Other defendants given prison sentences is even higher than the percent of Black defendants, for the same crimes."

The Statistical Report of the Federal Bureau of Prisons for Fiscal Years 1969 and 1970 disclosed that out of all prisoners sentenced to Federal prisons during the fiscal year ending June 30, 1970, the average sentence for whites was 42.9 months, while for Blacks it was 57.5 months—more than a year longer on the average. In the preceding fiscal year, the average sentence was 42.6 months and 52.9 months, respectively, a spread of 10 months.

DISCRIMINATION IN SENTENCING

Our study does not support the conclusion that there is a differentiation in sentencing in the Southern District of New York as between Black and White defendants charged with the same offense. There does, however, appear to be a

form of indirect discrimination growing out of the different treatment of offenders for different classes of violations. There are plain indications that white collar defendants, predominantly white, receive more lenient treatment as a general rule, while defendants charged with common crimes, largely committed by the unemployed and undereducated, a group which embraces large numbers of blacks in today's society, are more likely to be sent to prison. If these indications are correct, then one may conclude that poor persons receive harsher treatment in the Federal Courts than do well-to-do defendants charged with more sophisticated crimes. Many individual judges in this district have made a conscientious effort to overcome this disparity and equalize the treatment of defendants, but these efforts, unfortunately, are not universal throughout the court.

DISPARITY IN SENTENCES BETWEEN OFFENSES

During the six-month period covered by the Southern District of New York sentencing study, defendants convicted of white collar crimes stood a 36% chance of going to prison; defendants convicted of non-violent common crimes stood a 53% chance of going to prison; and defendants convicted of violent common crimes stood a 80% chance of going to prison.

Turning to specific violations, the study revealed that 100% (8 out of 8) of those convicted for the theft of securities received prison terms (with an average sentence of two years and 8 months for those with no prior criminal record); while only 66% of those convicted for securities fraud (6 out of 9) received prison sentences (with an average term of one year and 7 months for those without prior criminal records). The average sentence for those convicted of income tax evasion (5 out of 10), with no prior record, was two months; the average sentence for those convicted of inside theft of mail (14 out of 32), with no prior record, was five months (the average amount of tax evaded was \$24,000, while the average amount stolen from the mails was \$200).

Annexed hereto as Exhibit "A" is a schedule showing the likelihood of a prison sentence for defendants convicted of different types of offenses, and also the variations in average length of sentences imposed in cases where the defendant is sent to prison. These disparities are shown both for sentences imposed in the Southern District of New York during the six-month study period, and also the comparative national averages for the fiscal year ending June 30, 1972. It will be seen that the chances of being sent to prison in the Southern District of New York range from 23% for bank embezzlement, to 83% for bank robbery. (The national average is 20% and 89%). The defendant convicted of *bribery* faces only a 25% chance of imprisonment in the Southern District compared to 55% if he were convicted of interstate theft. (The national figures are 27% and 42%, respectively.) Not only is the likelihood of going to prison much higher for certain offenses, but the average prison sentence itself is also markedly different. The average prison sentence in the Southern District of New York was 18 months for bank embezzlement; 69 months for bank robbery; 11 months for bribery; and 18 months for interstate theft. Happily the record of the Southern District of New York is substantially better than the rest of the country in many respects.

DISPARITY IN SENTENCING BETWEEN INDIVIDUAL JUDGES

The practice of "judge shopping" has been halted in the Southern District of New York by a system of assigning cases by lot. But the underlying evil has not been eliminated. The chances of a defendant going to jail are still largely determined by which judge his case is assigned to. Different judges have different personal views about different violations, and permitting these differences in personal opinion to control sentencing largely destroys the ideal of evenhanded justice for the individual defendant.

The wide disparity in personal sentencing practices can be most easily demonstrated in Selective Service violations. Because of the similarity in the nature of the cases, it is possible to analyze the sentencing philosophy of each District Court Judge by studying how he has handled the sentences in the cases before him. Such an analysis is annexed hereto as Exhibit "B". In order to insure an adequate statistical base, the study period for these cases was extended to three years (even so, the sample in some cases is obviously too

small to generalize). It would clearly be impossible to explain to the parents of a boy who has been sent to prison by Judge "W", and would not have been in his case had been assigned to Judge "C", that the present system is fair and just.

On the off-chance that the special nature of Selective Service cases, which often generate heated views in many quarters, might not be typical of the whole, we also conducted a five-year study of sentences imposed on postal employees charged with postal thefts with similar results. By definition, such cases are essentially similar both on the facts and on the backgrounds of the defendants. The results are set forth in Exhibit "C". Any such defendant assigned to Judge T stood a 50-50 chance of going to prison, while if he was assigned to Judge AA his chances were only 1 in 25.

DISPARITY IN SENTENCING BETWEEN DISTRICTS

The National Institute's 1972 study for the McClellan Committee, referred to above, found a wide spread between the average sentences among the 93 Federal districts, and concluded that "... [The] length of sentence which a defendant can expect is very much dependent upon which district he happens to be tried in."

Based on average sentences, a person convicted of forgery in the Southern District of New York will receive twice as long a sentence as one convicted in the Northern District of New York. Likewise, a person convicted of interstate transportation of a stolen motor vehicle in the Southern District of New York will receive a 50% higher sentence than a person convicted in the Northern District of New York. If he has the misfortune of being convicted in the Eastern District of New York, the sentence will be more than double that of the Northern District of New York. On the other hand, a defendant convicted of a Selective Service violation in the Southern District of New York will receive a sentence of less than one-third as long as in the Northern District of New York. An analysis of these disparities in length of prison sentences between individual districts in the Second Circuit is annexed hereto as Exhibit "D".

A similar analysis of variations between Circuits for the same offenses is annexed hereto as Exhibit "E". The range in average sentences for forgery runs from 30 months in the Third Circuit to 82 months in the District of Columbia Circuit. For interstate transportation of stolen motor vehicles, the extremes in average sentences are 22 months in the First Circuit and 42 months in the Tenth Circuit. For Selective Service Cases, the extremes are 28 months in the First Circuit and 46 months in the Tenth Circuit.

DISPARITY IN SENTENCE BETWEEN INDIVIDUAL CASES

The following synopsis of selected individual cases in which prison sentences were imposed during the six-month study period graphically illustrates the basis for the sense of injustice on the part of individual defendants at the difference in sentencing of white collar and common criminals. Other, more extreme, examples can be found in a larger period of time, but these are sufficient to make the point. All of these cases involve defendants with no prior convictions:

Case 1.—Defendant A, a Caucasian male in his mid-forties and vice-president of a Wall Street brokerage firm, was charged with securities fraud by violating Regulation T and the margin requirements established by the Federal Reserve System. The amount involved in the transactions reached the sum of \$3 million of excess credit, on which the defendant personally realized unlawful commissions of a good many thousands of dollars. Upon his plea of guilty, defendant A was ordered to pay a fine of \$6,000.

Case 2.—Defendants B and C, father and son, were charged with income tax evasion for concealing \$100,000 in income over a three-year period. Defendant B, a widower, is a 65 year old Caucasian male and his son, defendant C, is a 35 year old Caucasian who is married and has a family. Both defendants are self-employed, earning \$40,000 and \$20,000 a year, respectively. Defendants B and C pleaded guilty and made restitution of the back taxes owed. Both were directed to pay fines of \$2,500.

Case 3.—Defendant D, a fifty year old Caucasian male, was employed by the IRS as a Special Agent. While in the process of carrying out his official duties

D accepted a bribe in the amount of \$3,000 and was arrested shortly thereafter. D, who is married and has a family, cooperated with the authorities and testified against two other agents resulting in their convictions. After pleading guilty to the charge, D was placed on unsupervised probation for one day.

Case 4.—Defendant E, a 64 year old Caucasian male and doctor of medicine, with yearly earnings of \$60,000, was charged with concealing \$80,000 income over a three-year period. The defendant pleaded guilty, paid all taxes due, and was ordered to pay a fine of \$10,000.

Case 5.—Defendant G, a 40 year old Black male, had served in the Armed Forces for over fourteen years where he earned the Bronze Star. G was arrested and charged with the transportation in interstate commerce of stolen U.S. Treasury checks valued at \$13,000. The defendant, who is married and has a family, had been arrested on a gun violation on a prior occasion but had no record of convictions. Defendant G pleaded guilty and was sentenced to a term of imprisonment of two years.

Case 6.—Defendant H, a 34 year old Black female, was the accomplice of defendant G in the transportation of the \$13,000 worth of stolen Treasury checks in interstate commerce. H, who had prior arrests but no convictions, was unemployed and receiving welfare payments for herself and her three children at the time of the crime. Like G, defendant H, pleaded guilty to the charge. She was sentenced to serve six months in prison.

Case 7.—Defendant I, a 31 year old Caucasian male, broke into a post office at night and stole \$20,000 worth of stamps. Upon his plea of guilty, defendant I was sentenced to prison for four years.

SUMMARY AND RECOMMENDATIONS

The study of sentences in the Southern District of New York underscores the need for a more evenhanded approach to the sentencing process. The irrational disparities referred to here are not abstract numbers but real flesh and blood problems involving the sense of justice and fair play of individual human beings. Fairness in sentencing is absolutely basic to any system of justice. As expressed in the recent final report of the New York State Special Commission on Attica, headed by Dean Robert B. McKay of NYU Law School:

"Experiences with the inequities of bail, with plea bargaining, adjournments, overworked defense attorneys, interminable presentence delays, and disparities in sentences imposed for identical offenses leave those who are convicted with a deep sense of disgust and betrayal. If the criminal justice system fails to dispense justice and impose punishment fairly, equally, and swiftly, there can be little hope of rehabilitating the offender after he is processed through that system and deposited in a prison . . ."

Most of us connected with the Federal courts share a belief that the Federal system is the best in the country. But it is clear from the findings of these recent sentencing studies that the Federal system is not immune to apparent inequities in the treatment of individual defendants. For those of us concerned with maintaining the excellence of the Federal system, the need for effective reforms is clear. But the importance of corrective action goes far beyond the Federal system itself. Because of the presence of Federal District Courts in every state in the nation, the Federal judicial system should also be setting an example of fairness and impartiality to which state and local judges might aspire. Leadership from the Federal bench could contribute significantly to the elimination of disparity of sentencing in all courts in all parts of the country.

The following recommendations recognize the fact that any system of sentencing must be tailored to the individual defendant in the individual case. The goal in sentencing should not be uniformity in every sentence that is imposed but rather a uniformity in policy and overall approach, with the specific sentence tailored to fit the facts of the particular case and the personality of the individual defendant. The individual variations in sentencing, however, should be rational and based on recognized standards, and not merely reflect the personal predilections of the individual judge toward the offense or his particular attitude toward corrections.

A. SHORT-RANGE GOALS

1. It is recommended that reports containing detailed data on sentences imposed in each district be compiled on a quarterly basis under the supervision

of the Circuit Council, indicating the individual sentences imposed by each District Judge, together with sufficient information to permit an intelligent appraisal of the sentence under the circumstances of the case. Possibly a uniform system might be developed to show the weight given to various factors in arriving at the final sentence. These quarterly reports should then be circulated to every judge in the district for his own self-education and also as a basis for informal discussions between himself and his colleagues.

2. Annual sentencing institutes might be held within each circuit for the express purpose of discussing sentencing policies with respect to particular offenses and particular defendant personality profiles, and reviewing past sentencing patterns.

3. An annual conference on sentences might be held on the national level with focus on differences in sentencing patterns and approaches between the various circuits, with a goal of seeking common policies which can then be communicated to the individual district judges throughout the country.

B. LONG-RANGE GOALS

1. The overall approach to sentencing should be reoriented to reflect the difference between rehabilitation of the individual defendant and deterrence of others who might otherwise be tempted to violate the law. The two concepts are mutually contradictory to a large extent, and an appropriate accommodation between these two conflicting concepts must be worked out. Essentially, defendants sentenced primarily for purposes of rehabilitation should be assigned to suitable facilities and programs expressly planned and staffed to achieve rehabilitation. Defendants sentenced primarily for purposes of deterrence should be assigned to humane custodial facilities.

2. In cases where rehabilitation of the defendant is the paramount objective, primary reliance should be placed on two techniques: (a) deferred prosecution and immediate rehabilitation efforts for adequately motivated defendants in lieu of conventional prosecution, conviction and sentencing; (b) controlled use of indeterminate sentences within maximum limits fixed by the court in each case, administered by properly qualified correction administrators, utilizing suitable facilities. This includes complete overhauling of the present parole procedures and approach, with principal emphasis placed on rewarding rehabilitation progress in accordance with objective yardsticks. We recognize that there are many objections to this approach but they relate primarily to how the concept is administered rather than to the validity of the concept itself.

3. The primary objective of deterrence should be focused on those deliberate and wilful crimes which might be prevented by prompt and firm detection, prosecution and sentencing (e.g., white collar crimes, extortion, narcotics trafficking). To achieve deterrence, it is recommended that a fixed sentence be imposed by the court (subject to some individual variation as appropriate) based on a percentage of the maximum sentence authorized by Congress under the statute. The term of imprisonment should be served in primarily custodial institutions, with rehabilitation services only secondary. A possible workable formula would be the imposition of one-third of the maximum sentence for the first offense; two-thirds for a second offense; and the full maximum sentence for a third or subsequent offense. In determining whether the violation constitutes a second or third offense, similar prior convictions should be taken into account. Obviously, to achieve effective deterrence, no parole should be permitted under such sentences. (Similar yardsticks might be used to fix the maximum sentence to be served where rehabilitation is the goal, permitting the administrator to discharge the defendant at any time prior to the completion of the term.) In individualizing the sentence imposed for deterrent purposes, the term obviously should be increased where aggravated circumstances are present, and reduced in recognition of special efforts by the defendant to make amends, such as voluntary restitution or active cooperation with law enforcement agencies to assist in apprehending and prosecuting other violators.

If such a policy toward uniform sentences were adopted, it is also obvious that Congress should be encouraged to review the present structure of maximum sentences to be sure they are consistent with legislative intent and a sound national policy.

EXHIBIT A

DISPARITY IN SENTENCING PATTERNS BETWEEN DIFFERENT TYPES OF OFFENSES, AND BETWEEN SDNY AND THE NATIONAL AVERAGE FOR FEDERAL COURTS

Offenses	Likelihood of imprisonment		Average length of prison sentences	
	SDNY ¹ (percent)	All Federal courts ² (percent)	SDNY ¹ (months)	All Federal courts ² (months)
Bail jumping.....	66.7	66.2	10.0	25.6
Bank embezzlement.....	23.2	19.5	18.0	21.3
Bank robbery.....	82.8	91.8	69.6	124.1
Bribery.....	25.0	42.5	11.0	15.1
Counterfeiting.....	51.7	53.7	14.8	40.3
Forgery.....	41.6	42.8	16.8	32.0
Gambling.....	37.2	29.9	3.3	14.5
Guns.....	50.0	45.3	28.2	32.1
Immigration.....	50.0	42.8	2.5	6.4
IRS.....	35.4	36.5	5.9	10.4
Interstate.....	54.8	43.7	18.1	33.8
Narcotics.....	77.0	70.6	62.4	46.4
Perjury.....	50.0	53.0	5.2	28.0
Postal.....	44.3	40.7	18.8	32.5
Embezzlement.....	43.7	19.0	5.0	11.6
Other.....	46.3	47.3	20.1	50.5
Rackets and extortion.....	55.5	47.1	46.2	31.2
Securities.....	70.4	55.4	31.8	38.7
Fraud.....	66.7	21.5	20.5	-----
Theft.....	100.0	57.4	36.5	38.7
Selective service.....	63.3	27.8	12.4	22.2
Totals ³	54.1	43.8	35.2	38.1

¹ Figures for SDNY are based on sentences imposed during 6-month period from May to October 1972.

² Figures for all Federal courts are based on sentences imposed during the fiscal year ending June 30, 1972, and are from the Annual Report of the Director of the Administrative Office of the U.S. Courts. Cases for SDNY are grouped according to classification of offenses as best as can be determined from the data given in the report.

³ Figures in the "total" section include all the crimes committed in both the SDNY and the Federal courts for the above period which were not enumerated in the chart.

EXHIBIT B

LIKELIHOOD OF A PRISON SENTENCE IN SELECTIVE SERVICE CASES IN THE SDNY BASED ON A 3-YEAR SAMPLING (1970-72)

Judge	Percentage of imposition of prison sentence (percent)	Total number of defendants sentenced
A.....	60	5
B.....	33	6
C.....	0	6
D.....	50	2
E.....	50	2
F.....	80	5
G.....	75	4
H.....	50	4
J.....	40	5
K.....	0	1
L.....	100	1
M.....	15	13
N.....	0	2
O.....	33	6
P.....	33	9
Q.....	50	2
R.....	0	2
S.....	40	5
T.....	57	7
U.....	0	4
V.....	0	1
W.....	100	10
X.....	60	5
Y.....	0	3
Z.....	0	2
Total.....	41.8	112

Notes: Letter code designates judges selected at random. The study covers all convictions during the years 1970-72.

EXHIBIT C

LIKELIHOOD OF A PRISON SENTENCE IN INSIDE POSTAL THEFT CASES AGAINST POSTAL EMPLOYEES IN THE SDNY BASED ON A 5-YEAR SAMPLING (1967-71). (LISTING ONLY JUDGES WITH 10 OR MORE CASES)

Judge	Percentage of imposition of prison sentence (percent)	Total number of defendants sentenced
A.....	26.3	19
B.....	17.9	28
C.....	11.4	70
D.....		
E.....	19.0	21
F.....		
G.....	39.1	23
H.....	28.6	28
I.....		
J.....	19.4	31
K.....	29.7	37
L.....		
M.....		
N.....	29.2	24
O.....	20.5	39
P.....	23.6	34
Q.....	27.8	36
R.....	25.0	48
S.....	10.7	28
T.....	50.0	24
U.....	16.7	12
V.....		
W.....	10.6	47
X.....	32.4	71
Y.....	7.8	13
Z.....	34.0	53
AA.....	4.0	25
BB.....	12.5	32

Notes: Letter code designates judges selected at random. The study covers all convictions during the years 1967-71.

EXHIBIT D

DISPARITY IN AVERAGE LENGTH OF PRISON SENTENCES FOR SELECTED OFFENSES WITHIN THE SECOND CIRCUIT DURING FISCAL YEAR ENDED JUNE 30, 1970 (FROM FEDERAL BUREAU OF PRISONS STATISTICAL REPORT, TABLE B-9) (IN MONTHS)

2d district	Forgery	Stolen motor vehicles	Selective service	Robbery
Connecticut.....	18.8	44.4	40.0	142.3
NDNY.....	15.0	20.9	48.0	68.0
EDNY.....	37.4	51.0	40.7	152.3
SDNY.....	32.9	30.7	14.0	110.0
WDNY.....	21.0	43.2	20.8	66.0
Vermont.....	24.0	40.0	48.0	
Circuit average.....	31.6	35.9	33.7	122.2

EXHIBIT E

DISPARITY IN AVERAGE LENGTH OF PRISON SENTENCES FOR SELECTED OFFENSES BETWEEN CIRCUITS THROUGHOUT THE UNITED STATES DURING FISCAL YEAR ENDED JUNE 30, 1970 (FROM FEDERAL BUREAU OF PRISON STATISTICAL REPORT, TABLE B-9) (IN MONTHS)

Circuits	Forgery	Stolen motor vehicles	Selective service	Robbery
1st circuit.....	32.4	22.3	28.3	106.3
2d circuit.....	31.6	35.9	33.7	112.2
3d circuit.....	30.7	37.9	33.5	132.5
4th circuit.....	34.3	35.9	42.5	185.3
5th circuit.....	37.0	37.0	39.7	177.8
6th circuit.....	37.3	32.4	40.0	143.1
7th circuit.....	38.2	35.5	31.4	137.9
8th circuit.....	32.0	36.7	39.6	157.9
9th circuit.....	34.7	41.6	28.6	131.3
10th circuit.....	48.7	41.8	46.7	146.1
District of Columbia circuit.....	82.0			330.0
National average.....	36.4	37.3	35.7	148.2

Senator McCLELLAN. Senator Hruska.

Senator HRUSKA. I would like my remarks placed in the record at this point.

[The above-mentioned material follows:]

OPENING REMARKS OF SENATOR ROMAN L. HRUSKA

The subject which we will begin consideration of this afternoon is the appellate review of criminal sentences. On February 1, I introduced S. 716, a bill to amend Chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the district courts of the United States. This proposal is identical to S. 2228 and S. 1501 which I introduced in the 92nd and 91st Congresses respectively, and to S. 1540, which was passed unanimously by the Senate in the 90th Congress.

I was extremely pleased to have Senator McClellan join me as a co-sponsor of my appellate review bill this year, along with Senators Hart and Scott of this Subcommittee. As the chairman has noted from time to time, he and I have labored hard together in the criminal justice field on a number of proposals, often successfully. Hopefully, the concept of appellate review will be incorporated into our federal jurisprudence in the not too distant future.

In this regard, I would like to say that the Subcommittee might see fit to engraft my bill onto S. 1 or S. 1400, or process it independently, or even proceed in both ways. To the extent that criminal codification is such a massive project and will not likely become effective for several years yet, the issue of appellate review could be approached by a separate bill at the present time and later on down the line be amalgamated into the recodification effort. This question of the immediacy of the situation is one which I hope to explore with our witnesses this afternoon.

The lack of authority for appellate review of criminal sentences creates one of the greatest single injustices existing in our federal criminal process today. Studies have shown that unreasonably harsh sentences are imposed on many individuals who stand convicted of a violation of our laws. Many of these unreasonable sentences are imposed on many individuals with fine families and good backgrounds, on individuals who strayed from the path on a single occasion and under trying circumstances, on individuals whose only offense was minor in comparison to those of others who have yet received far lesser sentences.

Under existing federal law generally, the determination of the sentence in a criminal case is the only matter that is left to the unsupervised discretion of the district judge before whom the case is pending. As long as the sentence imposed is within the statutory limits provided by the law, the sentence is not reviewable by appeal.

While I am quick to recognize that S. 1 and S. 1400 would eliminate many of the sentencing disparities and inequities heretofore visited upon criminal defendants in the federal courts, it is also clear that any new sentencing scheme which may emerge would not provide a talismanic cure for improper sentences which may be imposed by federal courts.

To adequately cope with the problem of improper sentences—to correct injustices once they have occurred—the practice of appellate review is required.

Let me make it clear at this time that I do not believe the bill which I have introduced is sacrosanct in terms of draftsmanship. The principle of appellate review, I am convinced, is sound, but I always welcome the advice of legal experts on the question of carrying principle into effect. Today, we will have the opportunity to explore this issue with a distinguished group of witnesses.

Additionally, it is my understanding that this subject will be continued over for additional consideration at our next public hearing on the proposed new Federal Criminal Code.

Senator McCLELLAN. Very well.

We are very glad to have these distinguished jurists here today. Judge Lumbard, I believe you appeared before us in 1966 when we were considering the Omnibus Crime Control Act, did you not?

STATEMENT OF HON. J. EDWARD LUMBARD, JUDGE,
U.S. COURT OF APPEALS, NEW YORK, N.Y.

Judge LUMBARD. I believe so.

Senator McCLELLAN. We are very glad to have you again. We welcome you, Judge Hoffman, also.

Judge Lumbard, will you proceed?

Judge LUMBARD. Yes, Mr. Chairman.

I am J. Edward Lumbard, a circuit judge of the second circuit, having been appointed July 1955. I was chief judge of the circuit from 1959 to 1971, and have been the senior judge since July 1971. I have been chairman of the Judicial Conference Advisory Committee on Criminal Rules since May 1971, and I think I should add that in addition to serving as a circuit judge, I have on numerous occasions sat as a trial judge in the district courts in criminal cases and have had occasion to impose sentences in three of the district courts of the second circuit and before becoming a judge I served as U.S. attorney for the Southern District of New York.

Speaking for the Advisory Committee on Criminal Rules, I think it fair to say that the committee is convinced that there should be some form of review of sentence in criminal cases. In that respect, of course, we have had the benefit of the considered report of the American Bar Association project on criminal justice with respect to appellate review of sentence, and I think it is fair to say that for some time now a majority of the public and a large majority of the bar has favored review, although there still remains considerable division among the Federal judges as to whether there should be review and the form that it should take.

In the fall of 1970, the Judicial Conference referred to our advisory committee the matter of considering what form review of sentence might take, and in response to that we have recently prepared and circulated a proposed amendment to rule 35 of the Federal Rules of Criminal Procedure which would provide for a review of sentence in criminal cases where the sentence was 2 years or more after the trial judge had denied a motion to modify the sentence. The review would be by a panel of three district judges designated for each district by the chief judge of the circuit, and that panel would have the right to modify the judgment but not to increase it. The rule is worded in such a way as to stress the simple, simplified, and expeditious handling of this form of review as set out in the proposed rule.

As you know, it takes a considerable time before rules can possibly become effective. These proposals are only in their first form. We ask the bench and the bar for suggestions and comments by February of next year, and of course following that there will be changes and modifications and then the rules will wind their way through the Judicial Conference and the Supreme Court and ultimately to the Congress.

Mr. BLAKEY. Judge, I wonder, do you prefer to finish and then have questions, or would you mind if you were interrupted as you go along?

Judge LUMBARD. I would welcome interruptions at any time that a question suggests itself.

Mr. BLAKEY. I wonder if I could ask you about the basic process which you just commented on. The Supreme Court has long recognized that the Federal courts are courts of limited jurisdiction, that is, they have no jurisdiction unless it is specifically granted by statute. This principle has been recognized in cases at least since *Meyer v. Tupper*.¹

As I read the enabling act, it does not confer on the advisory committee any power to enlarge the jurisdiction of Federal courts. Therefore, how can we justify the issuance of the rule such as proposed, rule 35? Wouldn't it constitute in effect the granting of jurisdiction to the review panel to overturn the sentencing court? How can we square this with the general principle just alluded to?

Judge LUMBARD. The proposal keeps this all within the district court. The district court now has the power to impose sentence and to modify its sentence after it has been imposed. We think for the same reason a panel of three judges of the same court could be empowered to do the same thing that any one of the judges of the court could do. Therefore, arguably it comes within the rulemaking power. Of course, if there be any question about that, that can be determined in the last analysis by the Congress, assuming that the Judicial Conference and the Supreme Court would agree.

Mr. BLAKEY. Thank you, Judge.

Senator HRUSKA. Then if the Congress were asked to express its judgment in that regard, would that be under the same method as having the rules submitted by the Judicial Conference to the Congress and the Congress given 90 days within which to act?

Judge LUMBARD. Yes. That is how the rules come before the Congress.

Senator HRUSKA. Well, that is how we have that total revision of rules of evidence now before the Congress. I wondered if it would be contemplated that that procedure would be used if rule 35 were changed?

Judge LUMBARD. It would have to be used.

Senator HRUSKA. It would have to be used.

Judge LUMBARD. Senator, that is the only power you have conferred to the courts that they may do it only in that way with respect to rules of this nature.

Senator HRUSKA. I wonder if some people who are a little particular about the jurisdiction of the Federal courts, might find it difficult to follow the idea that a district court will take action, and then that action will be lifted over into another sphere, to wit, a three-judge court. In a sense it is an appeal from what at first was indicated. Was that argument raised and, if so, how was it disposed of?

Judge LUMBARD. I suppose I might liken it to the en banc procedure in the court of appeals on a modified scale. We really took this largely from the practice for some years in the States of Connecticut and Massachusetts. They have had trial judges sit as a panel under the State statute reviewing sentences in very much the same way that we have proposed.

¹ *The Steamer St. Lawrence, Meyer et al. claimants v. Tupper et al. libelants*, 66 U.S. (1 Black) 522 (1862).

Senator HRUSKA. One other thought in that regard. We have been holding hearings on the omnibus judge bill. It has been the practice of Senator Burdick of North Dakota, chairman of the Subcommittee on Improvements in Judicial Machinery to make inquiry of the judges that come before us on that subcommittee. What do you think of this multiple-judge court matter and the three-judge court system? There has been universal expression of unhappiness and dissatisfaction with it and a desire to see that system of operation discontinued.

Now, then running counter to that, we would like to get rid of that type of hearing. On that basis, there is an effort not only to perpetuate it, but to increase it. It would seem to run counter to the idea of imposing on the necessity of three judges getting together and considering something.

Judge LUMBARD. Well, you have three judges in the court of appeals. Our feeling is that you should have a review somewhere, and that perhaps it does—it can be most easily accommodated and handled by a panel of district court judges than it can by any other device for reasons which I would like to develop.

Principally, the district judges have had far more experience in the matter of criminal sentences than have the judges of the courts of appeals. You will find that of the 93 active circuit judges on the courts of appeals according to a count made a few weeks ago, only 34 of those judges have sat in the district court prior to becoming circuit judges. There is a feeling on the part of the circuit judges themselves, as well as on the part of the district judges, that the circuit judges really don't know enough about this sentencing business. They are uncomfortable with it and I don't think I need to tell you that the most unpleasant thing that a Federal judge does is to impose sentence in a criminal case. It is a very difficult, disturbing experience and it is one that ought to have the talents of those who have had experience in it.

The proposed rule 35 system would permit the chief judge of the circuit to designate from among the district judges in the circuit those more experienced and more senior members who have served on the district courts. There are available in each of the circuits such experienced district judges.

I should point out next the great number of cases which conceivably would be subject to review under any proposal. In the last fiscal year 37,000 defendants were sentenced in the Federal courts. Of those 9,126 received sentences of 2 years or more. This is a breakdown of the figures reported by the Administrative Office of which I will be glad to supply the committee with a copy.

We now have in the courts of appeals approximately 4,000 criminal appeals each year, and it is immediately apparent that even by reducing, even if you fix the level at which there could be a petition for review to as much as 2 years, you would still have over 9,000 potential appellants. I realize that the proposals in Senator Hruska's bill, S. 716, requires a leave from the court of appeals in order to proceed, but of course the papers filed on the application for leave would be virtually the same as the papers filed under our proposed rule 35.

On this matter of the volume of cases to be reviewed, I think whether the solution is by appeal to the court of appeals or some review by a district court panel, there ought to be some provision with respect to pleas of guilty where the defendant knows in advance the sentence that he is going to get. Obviously, most of the convictions arise on pleas of guilty, roughly 80 percent of the convictions, in the Federal system arise that way, and increasingly pleas of guilty are entered after discussions with the Government. This is called a plea arrangement, a plea agreement, sometimes called plea bargaining. In fact, under proposals which this same advisory committee has heretofore made, the proceedings for these plea agreements is spelled out in proposed amendments to rule 11.

But my point is that it would greatly relieve whatever system is adopted if it could be explicitly provided that in cases where the sentence is imposed after such an agreement so that the defendant knows exactly the sentence that he is going to receive, he should not have the right and need not have the right to appeal from sentence in such case.

Mr. BLAKEY. Judge, could I ask you two questions along that line? A principal reason being advanced against appellate review of sentencing is court congestion. I grant you that court congestion is certainly a problem, but should we as a society fail to do justice simply for a lack of resources? Shouldn't we provide the resources instead?

Judge LUMBARD. Yes, Mr. Blakey. I think the resources should be provided because this is such an important factor in the proper administration of criminal justice and in the possibility of rehabilitating defendants.

But I think if the resources are to be applied it does much less damage to the quality of judicial work to do it in the district courts than it does to provide additional judges from the courts of appeals. This gets us into another subject, a very important one, and that is the structure of the Federal courts of appeals. In my opinion they ought not to consist of more than nine judges if possible. The minute you keep adding to the appellate load, and as you know in the last 10 years it has increased over 300 percent, you run into the question whether there be more circuits or whether there should be more judges on the courts of appeals. It is much easier, and I think more proper and more in keeping with the Federal system, to supply more district judges if they are needed, which is about what we have been doing in the last 10 years. It is much better to do that than it is to put more judges on the courts of appeals and change the character of the courts, which is the inevitable consequence when you have a group of more than nine people acting as members of a court, especially where they sit in panels of three and you expect them to keep each other advised as to what the law of the circuit is and what decisions the various panels of the court are handing down.

For that reason, in addition, it seems to me it would be much more advisable to experiment in the sense that whatever is done is an experiment because it would be something new to the Federal system to permit a period of experimentation with review in the district courts to see how the matter can be handled there as against

placing at one time an enormous additional load on the courts of appeals which in my opinion in many respects would change the character of those courts.

Mr. BLAKEY. Judge, let me ask you this question: Granted the growing problem of court congestion, can we really exclude this new classification of appellate review of sentencing simply because it is newly pressed on us? Shouldn't we attempt to judge its relative merits with other classes of cases or issues now in the courts? For example, in our Federal courts, what about review of State convictions through expanded habeas corpus? Wouldn't Federal Courts have more time to review all aspects of Federal cases and shouldn't we as a society, particularly in the Federal context, have a duty to keep our own house in order before we undertake to police our neighbor's? What I am saying is, wouldn't it be better for us to take out of the Federal courts State habeas corpus and replace them with Federal review of sentences than to exclude Federal review of sentences altogether?

Judge LUMBARD. I certainly agree with the idea which is implicit in your question, Mr. Blakey, namely, that there should be some reduction in the load with respect to the review of State conviction and that also is the subject of some of our proposals which we are making at the very same time as we are making the proposals with respect to rule 35. However, it seems inevitable no matter what we do in one place to decrease the load on Federal courts, it is going to increase somewhere else as it has recently with respect to section 1983 of title 42, civil rights cases, just to take one example.

Of course, there is another factor here. We are talking about a great number of cases, but I think the fact is that most of the petitions for review, whether it is an application to the court of appeals for leave to appeal or whether it is motion papers sent to this district judge panel, most of these matters can be decided very speedily by looking at the papers and our proposed rule would permit the panel to decide whether it needed to do more than to read the papers and decide the matter then and there, which I believe it fair to say is what would happen in about 80 percent of the cases. Then to hold hearings with respect to the other percentage as they may find necessary.

Now, the way this has worked out in the Connecticut system, for example, they schedule 27 hearings in 1 day. There the judges actually go to the prison and in many cases the defendant himself appears before the panel which seems an impossible thing to do under the Federal system. The reason I cite this and the point I am now making is that most of these applications can be handled with a minimum of effort, especially if it is done by experienced district judges who have the feel of sentencing because they have been through it themselves for a long period of years, and can do it in this way; whereas, a panel of circuit judges more likely than not will not be able to do it that way.

Mr. BLAKEY. Let me ask you this question in that context: One of the goals appellate review of sentence is aimed at is eliminating or cutting down disproportionately severe sentences. The studies already in the committee's record indicate there is an intercircuit as well as an intracircuit disparity. How could rule 35 meet that problem when it only deals with judges from the same circuit reviewing?

Judge LUMBARD. It would not meet that problem. I don't think it should be calculated to meet that problem. I think this, too, is an area where there may well be appropriate and proper reasons to have some difference in the kind of sentence which is imposed in certain kinds of cases in one part of the country or another part of the country, depending upon the situations which are responsible for the violations of law and perhaps the kind of people that commit the kind of violations of law and the reasons why they commit these violations of law. There are almost no areas, I would submit, where it is profitable and advisable too have hard-and-fast rules as to what sentences should be. The only case I can think of is one which obtained some years ago and had to do with theft from the mail by Post Office employees. There was a time when the judges in the eastern district of New York announced, all of them, this is one thing upon which they all agreed, that any Post Office employee who stole from the U.S. mail was going to jail for at least a year and a day, no matter what. They had that rule, the southern district didn't have a similar rule and the curious thing is that they had far fewer thefts in the eastern district than in the southern district.

Senator HRUSKA. Will the counsel yield?

I don't know if there is a rule that regardless of high wind or high water there is going to be a year and a day for stealing from the mail; of course, that is a denial of the very essence of good sentencing procedure.

Judge LUMBARD. I am not advocating that, Senator, I simply gave this as the rare case where there can be any agreement on any such procedure. I think there must be flexibility in the matter of sentencing. There is no way under the sun in my opinion that you can put sentencing in watertight compartments. There are so many variables in each case, as to each particular person and the totality of the circumstances that the very best that even the most experienced judge can do is to bear in mind what has been done in similar cases and give that all the proper weight and consideration that is possible.

Senator HRUSKA. I don't believe there is anyone that contends too seriously for inflexibility. Of course, there should be a good deal of judgment, with circumstances of all kinds being taken into consideration. However, the evidence before this committee already has indicated situations wherein a first offense for forgery of a Government check by an unemployed man with five children will get him, say, 6 months, and in another locality that same offense, under the same general conditions, will bring, instead of 6 months, 26 months.

Now, we are engaged in national enforcement of the law. There is no reason why in Oregon there should be one set of circumstances getting x months and another one in Massachusetts getting y months. As to that proposition there is some misgiving in my mind how rule 35 adopted for these purposes hopefully functioning intracircuit can reach that sort of problem. Do you think it can?

Judge LUMBARD. Well, Senator, I just don't see how we can reach perfect justice in situations of this sort involving all of these intangibles, the variables, the human equation. We can only do the best that we can and I think that is to provide some mechanism for modifying the excessive sentence, the sentences that are out of line and the mere fact that you have such a review procedure itself will operate

as a brake upon those judges which are inclined to give excessive sentences. The fact that the courts are reviewing these matters, and I would think it would be advisable wherever they modify sentence, as you propose in your bill, that they state their reasons for what they have done, that in the long run this is going to tend to even things out about as much as you can hope for.

Senator HRUSKA. Is there anything to the suggestion that when a review of a judge is of the same level perhaps there might be inhibitions on the part of those district judges to sit in judgment on a fellow district judge where that would not necessarily be quite as true where the level is different.

Judge LUMBARD. This is a possibility, but I don't think that will exist in most cases, Senator. Our judges have become accustomed over a period of time to having their colleagues disagree with them. You know, it is the practice to ask district judges to sit on courts of appeals because of the value of that experience. They are sitting from time to time on what their colleagues have done in the district court. Nobody ever takes umbrage at that. Those of us who sit in the district court as I have—I have been reversed at least twice by my colleagues on the court of appeals. In one case I think they were right. This is part of being a Federal judge, that you have other judges that pass upon what you do, and why shouldn't this happen with respect to criminal sentences when it happens with respect to everything else in the Federal system?

Senator HRUSKA. Of course, that argument has been turned against the proposition you advanced by saying there is an appeal from everything else which ripens into a judgment of the district court. Everything goes up to the circuit court unless it does directly to the Supreme Court as in the case of antitrust suits.

Now, why should the exception be made? That is the one that we have been wrestling around with?

Judge LUMBARD. I think you meet the objections adequately by having a panel of district judges pass upon the matter.

Senator HRUSKA. Well, thank you very much.

Mr. BLAKEY. Let me discuss with you a little bit whether those objections really are met. For example, would it be possible through your sentencing panels to develop a jurisprudence of sentencing and, by that, principles of when a sentence should be severe or when a sentence should not be severe? I suppose they would not write many opinions; if so their judgments would be unknown and not carry force by example. Assuming they wrote opinions without the power to review them, would we really be better off or wouldn't we have a wilderness of single instances? Would we have anything like authoritative guidance? I am told England has been able to develop a way of sentencing to guide its courts. Shouldn't we try to achieve the same objective and rule 35 really couldn't do it?

Judge LUMBARD. I think it is worth trying, Mr. Blakely. It is an area and a kind of subject where it is very, very difficult to lay down any precise standards. I think some purpose would be served by having the opinions circulated and published. That is what the panel does in Connecticut. They write opinions in each case and they are printed. In Massachusetts they don't. I think it is worth trying to see what the judges can do with the subject.

Senator McCLELLAN. We have a vote. We will have to recess for a few moments.

Would you give me one answer quickly. I was interested in what you said about the experience in New York where there was a kind of an unwritten rule, a gentleman's agreement among the judges, that one caught stealing from the post office, from the mails, would receive a minimum sentence of 1 year and you said, I believe, that this did serve as a deterrent and there was far less such crimes being committed in New York than in other areas of the country; is that correct?

Judge LUMBARD. It operated only in the Eastern District. This was about 30 years ago, Senator. It doesn't operate any longer. I cited it as that rare example where you are dealing with Federal employees who are charged with the knowledge of what is going to happen if they do something.

Senator McCLELLAN. That is why it was significant to me—that they knew what they were going to get the minimum punishment, at least, if they violated the law.

Judge LUMBARD. Yes; this is the only case I know of where such a procedure—at least for a brief period of time—was effective.

Senator McCLELLAN. My only thought is that we have arguments today about whether certain things deter crime. I thought that if a death penalty wouldn't deter one from committing murder, I don't see why we could expect a 20-year sentence to deter someone from committing a bank robbery. I think the deterrent is the penalty and the enforcement of it. I think that is what constitutes a deterrent.

Judge LUMBARD. Of course, with the postal employees you are dealing with a situation where a very large percentage of offenders would be caught and apprehended and punished.

Senator McCLELLAN. Well, the certainty of punishment, I think, is what probably was the greatest deterrent.

You will have to excuse us a few minutes. We will try to come back after we have two votes. We may have one following this one. You be patient, we will be back.

[A short recess taken.]

Senator McCLELLAN. We will come to order.

Mr. BLAKEY. Judge, let me ask you this question: There is an apparent agreement that disparity is a problem, but only with respect to severity. Isn't it just as much a problem of leniency? How could rule 35 meet the problem of a lenient sentence that the defendant cannot seek review of? Could you provide prosecutor review as well as defendant review? Shouldn't the panel be able to raise as well as to lower, and shouldn't the prosecutor as well as the defendant be able to appeal?

Judge LUMBARD. Well, I think in theory, Mr. Blakely, there should be that power, but most of the thinking seems to be that this might deter defendants from applying for review, and, as a matter of fact, in practice where there has been the power to increase as well as to modify, the courts or the reviewing panels that have had that power have very seldom exercised it. For example, in the State of Connecticut there has not been an increase in a sentence since 1963 although there have been a considerable number of modifications and they have handled something around 200 cases a year. This is also pretty

much the experience in Massachusetts. It is a power that is very little exercised, and therefore while in theory it would seem that the Government ought to have that right, I don't think as a practical matter it makes very much difference not to give them that power.

Mr. BLAKEY. In that connection, Judge, the subcommittee did a sample of Federal sentences at least in the organized crime area. With the chairman's permission it might be helpful if we inserted a memorandum in the record at this point indicating some of the instances of inadequate sentences given by Federal judges in organized crime cases. There is some indication, although a limited number, some need for review of trial court discretion.

Let me ask you as an alternative way of looking at this. Some people have suggested that one way to get at leniency by trial courts is to impose minimum mandatory sentences. Might it not be more discriminating by the prosecutor where the sentence can be increased rather than minimum mandatories?

Judge LUMBARD. Well, I think there, too, this meets only one of the rather minor objectives of the review of sentence and there seems to be so much fear that it might deter defendants from seeking review that on the whole most of the commentators who favor there being more flexibility in the power of sentencing would be in favor of not having any mandatory minimum sentences.

Senator McCLELLAN. Thank you, Judge Lumbard.

Senator Hruska.

Senator HRUSKA. Thank you.

I just have one question and an observation.

A case came to my attention, decided in the Eighth District where there were five counts of mail fraud. The trial judge gave the defendant 5 years on each of those counts and the sentences were to run consecutively, 25 years for a first offense. The case was appealed and the circuit court of appeals dismissed three counts and let the sentence stand, which gave the man 10 years, two sentences of 5 years apiece. I wonder under those circumstances whether the panel of three judges would have the authority to do that?

Judge LUMBARD. Under proposed rule 35, Senator? They would have the power to modify the sentence from 25 years to 10, but they could not disturb the conviction on the five counts, only the court of appeals could reverse the conviction on any particular count.

Senator McCLELLAN. As I understand, they could reduce the penalty on each count; couldn't they?

Judge LUMBARD. Yes.

Senator McCLELLAN. Whether it is 25 years, they could take 5 years on each count——

Judge LUMBARD. They could work such modifications as to bring the result down to 10 years.

Senator McCLELLAN. Well, is the minimum penalty 2 years?

Judge LUMBARD. Two years on each of the five counts would be one way to do it.

Senator McCLELLAN. The minimum is 2 years in that instance?

Judge LUMBARD. No, there is no minimum on the mail fraud statute.

Senator McCLELLAN. They could bring it down to 5 years, couldn't they?

Judge LUMBARD. Senator——

Senator HRUSKA. Or make it 2 years on each count and provide they run concurrently instead of consecutively?

Judge LUMBARD. Yes; that would perhaps——

Senator HRUSKA. The point is that with the present system this type of thing is resorted to. It sometimes produces rather grotesque results, but after all here was a man with 25 years, and I don't know of any ordinary second degree murder case where a man has deprived another man of his life that one gets into a sentence like that.

Judge LUMBARD. It sounds very much as if the court of appeals was outraged at the sentence and determined that the way to do something about it was to vacate three of the counts for reasons which they were able to discover in the record.

Senator HRUSKA. It would appear so, and they got the results done. I don't know what the circumstances were, but the method and the results were a little bit out of order.

The appellate review issue has been before the judicial conference a number of times in the last 10 years. I wonder if we could get a running history of that.

Mr. BLAKEY. Senator, the staff has prepared an exhibit on that and we can insert in the record. [See p. 5376.]

Senator HRUSKA. If that would be in order, I didn't know there was a chronology prepared.

Judge LUMBARD. I remember back in 1960 we first had before the conference one of your proposals on this subject, Senator.

Senator HRUSKA. Yes.

Did you indicate already in your testimony how long it would take to develop a new rule 35?

Judge LUMBARD. Well, I would think a normal procedure from the present time it would take at least 2 years. As I stated earlier, we have asked that suggestions and proposals with respect to the proposed rules be submitted by February of next year, 1974.

Senator HRUSKA. That would be the recommendation of the advisory committee?

Judge LUMBARD. Of the advisory committee.

Senator HRUSKA. To whom do you report?

Judge LUMBARD. Well, we first report to the standing committee on the rules of which Judge Maris is chairman, but that goes through rather quickly because they keep in touch with what we are doing. The proposal then goes to the Judicial Conference of the United States which meets twice a year, and from the Judicial Conference, if it is approved, it goes to the Supreme Court of the United States and if the Supreme Court approves it then reports the proposals to the Congress where under present law it must lie for at least 90 days before it may become effective so that at the very minimum this would take 2 years and very likely longer.

Senator HRUSKA. Well, I assumed that that was the procedure, but this puts it in the record in a more detailed fashion.

I believe that exhausts the questions I have, Mr. Chairman.

Thank you very much.

Judge LUMBARD. Thank you.

Senator McCLELLAN. I thank you very much.

Judge Hoffman, you may proceed.

STATEMENT OF HON. WALTER E. HOFFMAN, CHIEF JUDGE, U.S.
DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, NORFOLK,
VA.

Judge HOFFMAN. There is very little that I can add to Judge Lumbard's comments with respect to either appellate review of sentencing or proposed rule 35. I have, of course, been on the bench now almost 19 years—I will have completed 19 years as of September 1, 1973—and of necessity I have had considerable experience in sentencing defendants as well as having served on the probation committee of the Judicial Conference of the United States for a period of 10 years, 6 years of which I served as chairman; from 1960 to 1970 I served on the committee and the last 6 years as chairman. I have also had the rewarding experience of serving on the Advisory Committee on Criminal Rules since 1960, and I am still a member of that committee.

As Judge Lumbard indicated, a couple of years ago the Advisory Committee was requested to look into the question of either appellate review of sentencing or some type of review, and we did so and came forth with what is now proposed rule 35, which is already in the hands of the bench and the bar in the form of a pamphlet which I am certain that you already have. It is combined with the proposed amendments of rules relating to habeas corpus proceedings, section 2255 proceedings, and certain other rules.

We appear before the committee not with the idea that there should not be some consideration given to a review of sentencing, but that the least expense you have and more expeditious method would be through the handling of a district judge panel.

One comment with respect to the—I think Senator Hruska raised it earlier—he mentioned to Judge Lumbard that there was criticism with respect to having three-judge courts, and I agree with him. I hope that Congress may do something with the disposition of three-judge courts. They are literally a nuisance but, under proposed rule 35 for a panel review of sentencing, it does not require the district judges to meet in a formal session. We visualize that probably 95 out of every 100 of these cases will be of little or no merit. We recognize, however, that there is an obligation on the judiciary as well as Congress to consider that 5 percent that may fall within the category of having an excessive sentence.

Senator McCLELLAN. You say the district judges will not meet formally to pass——

Judge HOFFMAN. It says, the rules say the presiding judge shall promptly call as a panel, either individually or in joint session, to review the sentence, so it does not require——

Senator McCLELLAN. Will each issue a separate order?

Judge HOFFMAN. No, each would confer by telephone or mail. However, I want to make it clear that the panel does have the authority to conduct a formal hearing.

Senator McCLELLAN. Yes, but is there no appeal provided from their review?

Judge HOFFMAN. There is no appeal provided from their final decision on review. That is correct.

Senator McCLELLAN. How is a decision entered in the record?

Judge HOFFMAN. They enter a formal order either modifying the sentence, reducing the sentence, or confirming the sentence.

Senator McCLELLAN. They can do that by conferences on the telephone?

Judge HOFFMAN. It is optional with the judges.

Senator McCLELLAN. But they can do it that way?

Judge HOFFMAN. They can call for briefs if there are lawyers, or they can consider letters from an individual defendant, but it is an informal proceeding which requires either individual action or the court sitting as a body. It does not require the formal meeting in a particular city for the purpose of conducting a formal hearing. I mention that to you because I think Senator Hruska was of the impression that it would be necessary in each of these instances to have the court convene and meet.

May I say also that you mentioned, and Mr. Blakey and Judge Lumbard mentioned, the question of increasing sentence. We have one other reason why the rules committee did not get into that aside from the fact that we believe it is purely a legislative function that we should not trespass upon. Under the case of *Behrens v. U.S.*¹ we feel that it would be necessary to bring a defendant back if there is going to be an increase in sentence, and if there is an increase in sentence and you have a federal prisoner who is many thousands of miles away, it would not only be the expensive thing to do, but it would possibly obstruct a rehabilitative process that has already started to take place, and under those circumstances we felt that we should not get into the increased sentence part.

We think that from the experience that we have had in connection with appeals, from direct appeals in criminal cases, that there is little likelihood that a provision for an increased sentence is going to have any deterring effect on the frivolous appeals or frivolous reviews.

Senator McCLELLAN. The only thing I see in it of great virtue is if they have a lenient judge because of corruption, bad faith, or incompetency, or if inclined to greatly favor the accused by not giving an adequate sentence, it would afford some future protection and relief to society.

Judge HOFFMAN. Well, there are judges—I have heard them at various sentencing institutes that I have played a prominent part in, and also with respect to the seminars for new judges, then on the faculty of that and actually have taught sentencing for a period of the last 7 or 8 years—there are judges who have fixed ideas one way or another with respect to particular crimes. I have heard it said by a judge who has now passed away that he would never send a man to jail for income tax evasion. I have heard it said, particularly since the Vietnam war became so unpopular, that he would never imprison anyone for a violation of the Selective Service Act. I have also heard it said——

Senator McCLELLAN. Let me ask you a question at that point. Is that the case of a court, a judge defying the law of the land? How could you interpret it otherwise?

Judge HOFFMAN. I think it is just as much a defiance of the law of the land for a particular judge, with respect to any particular

¹ *United States v. Behrens*, 375 U.S. 162 (1963).

crime, singling that crime out and saying everyone must go to jail for the maximum period of time. I have heard judges say that with respect to drug offenders that——

Senator McCLELLAN. You can apply the maximum sentence and be complying with the law and exercising discretion, but when one takes the position “I will not sentence or order punishment for a violation of a law where the law provides for punishment,” it seems to me that is defying the law.

Judge HOFFMAN. I think it is an abdication of his judicial function. There is no question about it. Those are the cases that, in introducing the appellate review of sentencing bill, I think Senator Hruska or you, or both of you, had attached to it the *Daniels*¹ case and reference is made to the *Wiley* case from Chicago and so on. Anytime a judge has a fixed impression with respect to a particular sentence that he should give or should not give, then he ought to step aside in that particular case and not hear it.

Senator McCLELLAN. I would think so. Both society and the individual are entitled to a fair trial and I think when we start a criminal case before a judge, that judge should be of an open mind that he is going to rule according to the law, in his best judgment and is going to keep an open mind as to what his duty may be with respect to sentencing until the case has been tried.

Judge HOFFMAN. Well, that is the doctrine we try to preach at the seminars for new judges and the sentencing institutes which are held now on an average of about once every 4 years for each particular circuit. Whether it rings——

Senator McCLELLAN. It seems like that is elementary. I don't think anyone sitting as a judge needs very much instruction on that.

Judge HOFFMAN. Well, whether it rings with every judge I cannot say.

I would like to say that one of the main concerns we do have on appellate review, as distinguished from a panel of district court judges, is that I think Judge Lumbard would agree, when the matter hits the appellate court there is frequently a compromise of differences by one judge saying well, I won't reverse if you will cut this sentence down from 10 years to 2 years, I will go along and vote affirmance and things like that. I don't approve of that. That has been done. I know it has been done in the District of Columbia and I am confident it is probably done on the appellate level in many, many instances.

Senator McCLELLAN. I would say at least that shouldn't be encouraged as a practice.

Judge HOFFMAN. That is correct, sir.

Now, with respect to the issue of disparity that has been raised, I will say that I do not think that rule 35——

Senator McCLELLAN. Senator Hruska, do you want to ask Judge Hoffman anything before you leave?

Senator HRUSKA. No.

Judge HOFFMAN. If the committee felt that they were in any way interested in any proposal to any amendment to rule 35 such as presented by us, we can only say that we have no pride in the author-

¹ *United States v. Daniels*, 446 F. 2d 967 (6th Cir. 1971).

ship and you are welcome to adopt anything that you wish if you think that Congress would act more speedily. We believe that the Federal judiciary as a whole is cognizant of the fact that there will be some type of review in due time. We have no suggestions with respect to proposed rule 35 except one that has come to my attention.

While the panel does have the authority to review and to modify, I think that we should specify that the right to modify shall include the right to adopt other sentencing alternatives to the same extent as the sentencing judge may have had. I mention that because the modification may not be in the form of a specific number of months or years. It could be in the form of an alternative sentencing provision as a sentencing judge may have had available to him and did not exercise. I think the right to modify should include that.

Also, I would like to comment on this issue of disparity. I, like Judge Lumbard, feel very strongly that it is impossible to work out any practical solution to the issue of disparity. It exists. It has existed for many years and will continue to exist. We feel that the issue should be directed to the plainly excessive sentence or in the judgment of Congress in the plainly inadequate sentence.

During the past 2 weeks, Mr. Chairman, I have had occasion to sentence four bank robbers. They robbed the same bank. One I gave 22 years to. One I gave 20 years to. One I gave 16 years to, and one I sentenced under the Federal Youth Corrections Act. Now, you will say I have been guilty of creating disparity, but if you look at the presentence reports with respect to these individuals and you see their backgrounds and see what the situation is, in my judgment, there is no disparity. I don't accuse myself of being guilty of issuing out any disparate sentences in that situation. I have placed bank robbers on probation; I have also given them the maximum sentence of 25 years. So that, that is how wide it is, and everybody can pick out individual sentences with individual crimes, but we sentence defendants, we don't sentence crimes. While the particular crime involved does play some importance in the determination of what ultimately should be done to a particular defendant, we must look at the individual and see what prospects, if any, there may be for rehabilitation. That is the ultimate goal, if there is any prospect. Some, of course, are never rehabilitated.

I follow the practice—and I see in S. 1 that it has been recommended that all persons become eligible for parole at such time as the board of parole may determine—I have followed that practice for years with respect to any sentence of 3 years or more. The reason I don't make it for a lesser time, it takes that much time for the parole board to act, not the whole 3 years, but it takes 1 year and by that time they are eligible for parole anyway.

With respect to that type sentence, I do believe there should be some flexibility as, when we pass sentence on an individual, we never see that man again, and despite the fact that some judges say they keep up with these inmates in their institution, the only time they keep up with them is when they get a letter from them, which is frequently, I admit, but it only presents their side of the situation.

I know that Senator Hruska has cited the illustration of the forged checks involving a 6-month sentence, and another one who forged a like check for the like amount and got a 10-year sentence,

and that is a situation that is difficult and we believe rule 35 will correct that situation as far as the 10-year sentence is concerned.

But on this issue of disparity, in 1968 I prepared a document for the seminar of new judges and I wrote to the Director of the Bureau of Prisons with respect to the issue of disparity and he wrote back, and I thereafter phoned him and received authority to print this in my paper presented for the new judges. At that time he said as follows:

In our opinion the issue of disparity in sentencing is no longer a significant problem. While this was a serious issue some 6 to 8 years ago, the sentencing institute and the implementation of 18 U.S.C., sections 4208(a)(2) and (b) have done much to correct the gross inequities we saw earlier.

I am not suggesting in reading that statement that there are not occasional instances of excessiveness; there are. That is, I think, what we must primarily drive at, but I am not willing to agree with Senator Hruska's version that this committee or any law or any appellate court or any review panel on a district court level can correct disparity. It depends on what disparity means. In order to have a disparate sentence you have to have two defendants, the same background, the same prior record, identical records, before you can say that a sentence is a disparate sentence. In my view there are very, very few of them that exist. I don't think there is anything wrong with a district judge in the same case imposing four different sentences on different individuals just because they participated in that same crime.

Senator McCLELLAN. I can agree with that wholeheartedly. One of them was pretty young, I think, and the other was probably a hardened criminal, the one that organized the robbery and led it and so forth. I don't see anything wrong in making a disparity or giving different sentences. I think justice requires that.

Judge HOFFMAN. I think so, too. I say that much of the issue of disparity, though, you see it in the newspapers, we get disparate sentences because two bank robbers robbed the same bank and one got one sentence and one got another sentence, and that creates something in the minds of the public, perhaps, but that is not the sentencing philosophy.

Senator McCLELLAN. I can understand that, but I cannot understand a fellow who has robbed two or three banks and been in once or twice being given something comparable to the minimum sentence when he comes back. I can't understand that.

Judge HOFFMAN. I can't either.

Senator McCLELLAN. That is what happens though.

Judge HOFFMAN. I agree with you that there are rare instances, rarer perhaps than the excessive sentence, but there are rare instances, and if Congress acts to pass a statute which would give the authority for a district court review panel to raise the sentence, the district judges would not shirk from their duty. As a matter of fact, I think Judge Lumbard would agree that a district judge would be more inclined perhaps to vote for an increase than the circuit court of appeals judge would.

Senator McCLELLAN. Well, as in most activities of life, we can try for perfection and never achieve it. We can make improvements

from time to time, but I don't think the ingenuity of man can devise a perfect system of sentencing.

Judge HOFFMAN. I quite agree with you, and with respect to Mr. Blakey's question developing a jurisprudence of sentencing, I have not seen evidence of that in England, although I have not made a detailed study of the matter. It is my view that with respect to a district court review panel that, where they modified the sentence, they would probably state briefly why they modified this sentence. I do not visualize that they would write any opinion whatsoever when they merely confirm the sentence.

Senator McCLELLAN. I see no objection to having them write a brief statement on why they reduced the sentence. I think it would be quite appropriate. Without such a requirement or practice it would be more vulnerable to suspicion.

Judge HOFFMAN. That is probably why they would do it in that situation, but I do not believe, Senator, that you are going to develop any particular jurisprudence of sentencing. Many, many people have written on this subject. I even took a hand in it and wrote 41 pages one time for the seminar of new judges which is now still used as a part of the program material which is distributed to all new judges after they are appointed. But authors throughout the country, my friend Professor Hall, who will speak to you very briefly, I am sure has written on it. I think that the average district judge is fully aware of the criteria that should be considered in sentencing.

You have mentioned deterrence. There are two types of deterrents. One is individual deterrence. One is general deterrence. Individual deterrence is as to the individual himself. General deterrence is what you are interested in primarily, whether it affects the public as a whole. I think it does with certain types of cases, such as certain white collar crimes, income tax evasion and things of that type. I think a death sentence would deter not the commission of a crime as such, but it would deter to some extent the violence that would arise out of that particular crime perhaps. But otherwise I don't think deterrents have any great effect upon the commission of run of the mill crime that we have in our Federal system. The white collar crimes are deterred and income tax evasion is made necessary, of course, by reason of our honor system of reporting taxes that we have to rely upon the individual involved, and therefore deterrents do play a very material effect upon that.

I don't think that I have anything more to add, except to say to you that before the Supreme Court now is a proposed revision to rule 32, which requires that presentence reports be disclosed to counsel for the defendants and the defendants prior to sentencing, with some exceptions that are built around that to protect peculiar confidential sources of information. Even then it is preserved for the appellate court process. If there be anything in there that should have been disclosed, it may still be ordered disclosed at a later time.

For the past 15 years I have been exercising the discretion to disclose those reports whenever there is nothing of a confidential nature in them. We have had no trouble with it. We have found that when defendants see that report, they have reason to believe that they know why they are getting the sentence that was imposed upon them

once they see that report, and we give them full opportunity to comment if there are any errors in the report. I do believe the promulgation to rule 32, which is still in the hands of the Supreme Court, because of—well, I don't know what that bill provided with respect to the Rules of Evidence, whether it applied only to the Rules of Evidence or whether it generally applied to all rules—but certainly the rulemaking power has been rather suspect, I think, in the past few months, and I think the Chief Justice would be advised not to send more rules over here for you gentlemen to worry about those particular matters.

I might say that I believe Senator Hruska is in error where he states that the Judicial Conference has indicated approval of appellate review of sentencing or some type of review. The Conference, the last time a vote came on the issue, was in connection with a bill introduced by Representative Biester, I believe his name was, and that particular bill called for appellate review of sentencing and it was defeated. The time prior to that was Senator Hruska's bill, and it passed by a one-vote margin in the Judicial Conference of the United States. But the Conference feels, and the Advisory Committee agrees, that the time has come when there should be some review, but taking the bare statistics of the situation, I believe that it would increase the docket on the appellate level by about some 3,600 cases a year, excluding the District of Columbia and the territories. If that is the case, that is an average of 360 cases more on the appellate level whereas we have 90 districts, and if you spread that out, and of course I know it must be proportioned, but taking it on a bare average, that is 40 cases for the district review panel in each particular district. We feel that it is far less expensive, far more expeditious. The decisions would come forward much more rapidly, in our judgment, on a district review panel, than they would on the circuit court of appeals level.

Senator McCLELLAN. Thank you very much, Judge Hoffman. Thank you, gentlemen.

Professor Hall, would you come around?

STATEMENT OF PROF. LIVINGSTON HALL, SCHOOL OF LAW, HARVARD UNIVERSITY, CAMBRIDGE, MASS.

Mr. HALL. I would like to make a few very brief comments.

Senator McCLELLAN. Very well. Let the statement be printed in full in the record at this point. You may proceed.

[The above-referred to statement follows:]

STATEMENT OF PROFESSOR LIVINGSTON HALL

Mr. Chairman and members of the subcommittee, my name is Livingston Hall. I am Professor of Law Emeritus at Harvard Law School in Cambridge, Massachusetts, and am presently Chairman of the Committee on Reform of Federal Criminal Law of the American Bar Association. By designation of the Section Chairman pursuant to authorization by the House of Delegates of the Association on February 12, 1973, I appear before you to testify with regard to our Committee statement of November 28, 1972, as it applies to the provisions for appellate review of sentences in § 3-11 E3 of S. 1, 93rd Congress, 1st Session.

Our Committee statement relating to the general provision in the Brown Commission's proposed new Federal Criminal Code for appellate review of sentence (p. 317, proposing an amendment to 28 U.S. Code §1291) was as follows:

"It is recommended that provision be made for appellate review of sentences, provided such is in accord with the ABA Standards, Appellate Review of Sentences (Approved Draft, 1968)."

I am presenting a volume of the ABA Standards Relating to Appellate Review of Sentences to the Subcommittee to be inserted into the record.

As you probably know, the American Bar Association Standards for the Administration of Criminal Justice are the result of a lengthy balanced and careful drafting process. The 17 approved volumes, including the Standards Relating to Appellate Review of Sentences, were drafted over a period of 10 years by a balanced team of experienced trial and appellate court judges, prosecutors, defense attorneys, public defenders and law school professors. Once drafted and approved by the Association, the Standards have been the subject of an intensive, five-year implementation program on the part of the ABA Criminal Law Section, whose Committee on Reform of the Federal Criminal Laws I chair.

Over the past year, the Criminal Law Section's implementation program has gained increasing momentum as more and more states across the country have launched statewide implementation efforts. On February 1, Florida became the first state to adopt most of the Standards by formal court rule. Similar success stories are expected to be announced later this year in other states.

Like the ABA Standards, legislation of the scope of S. 1 will serve as a stimulus to the states to update their substantive codes in the area of appellate review of sentences. Because such legislation becomes a model for state legislative drafters, its importance is greatly magnified. For this reason, the American Bar Association supports the rewriting of §3-11 E3 to come into line with its approved policy as stated in the Standards Relating to Appellate Review of Sentences.

Let me amplify that point in more detail by going to specific provisions in the Standards. At the outset, however, one possible ambiguity should be cleared up. The Standards themselves are silent on the question whether sentence review and increase at the instance of the government should be permitted. While the Commentary to the Standards indicated opposition to such review, it did so primarily because of its apparent unconstitutionality on double jeopardy provisions (p. 56, Supplement p. 3).¹

The subsequent case of *Price v. Georgia*, 398 U.S. 323, 1970, indicated that "the Double Jeopardy Clause of the Fifth Amendment is written in terms of potential or risk of trial and conviction, not punishment" (398 U.S. at 329); see also *North Carolina v. Pearce*, 395 U.S. 711, 1969. On the basis of these cases, and since the Commentary does not state ABA policy, the Board of Governors of the ABA, on July 15, 1970, approved the concept of sentence increase on sentence review taken by the government, when it approved the appellate review provisions of Title X of S. 30, 91st Congress, 2nd Session. The basis and result of this action of the Board of Governors are spelled out in more detail in a letter of September 11, 1970, from ABA President Edward L. Wright to Representative Celler, Chairman of the House Committee on the Judiciary.

There is also before your Subcommittee S. 716, 93rd Congress, 1st Session, introduced by Senator Hruska and others on February 1, 1973, with the hope that it would be "engrafted onto S. 1 in appropriate form". See 119 Cong. Record No. 18, Feb. 1, 1973. With your permission, Mr. Chairman, I should like to comment upon the provisions for appellate review of sentences in both bills.

The need for such appellate review is amply documented by numerous studies of the sentencing practices of judges in both state and federal courts. I shall here do no more than to refer to the recent survey of sentencing disparity in the federal courts, which Senator Hruska has included as an exhibit following his remarks in the Congressional Record for February 1, 1973.

The procedural provisions for appellate sentence review in S. 716 more nearly coincide with those recommended in the ABA Standards than do those of §3-11E3 of S. 1. The latter section, modeled on 18 U.S.C. § 3576, and limited to review of sentences to "upper range imprisonment for dangerous special offenders" under § 1-4B2, obviously does not provide a procedure for appellate review of sentences generally.

ABA Standard 1.1(b) recognized that "it may be desirable at least for an initial experimental period to place a reasonable limit on the length and kind

of sentence that should be subject to review." But a majority of the Advisory Committee on the Standards felt that the limit should not exceed one year in jail, and all agreed that a limit in excess of 5 years in jail "would defeat the realization of many legitimate objectives of sentence review" (p. 20).

The other important questions before your Subcommittee on this matter, as I understand them, are these:

(1) Can such appellate review of sentences be accomplished without burdening the federal Courts of Appeal?

(2) Is it possible to develop a jurisprudence of sentencing?

(3) To what extent, if at all, can these goals be achieved without the power to increase as well as to affirm or decrease a sentence (a) on appeal by the defendant and (b) on appeal by the government?

(1) THE BURDEN OF APPELLATE REVIEW OF SENTENCE

So long as the criteria for sentence reduction applied by the appellate court are appropriately limited by the court, and these limits are honored by appellants' counsel, there is no reason to fear overburdening of our Courts of Appeal. The English experience here is instructive. Its Court of Criminal Appeal thus stated its position (see Mueller and LePoole, 21 Vanderbilt L.Rev. 411 at 423-424, 1968, reprinted in your Subcommittee's record of these Hearings, Part III, Subpart B, Policy Questions p. 1592]).

"In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial judge has seen the prisoner and heard his history and any witness to character he may have chosen to call. It is only when a sentence appears to err in principle that the Court will alter it! If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene."

As Mueller reported, when the English court had the power to increase sentences on appeal by the defendant in 1963, the court had only 1976 applications for leave to appeal, with the result that the sentence was reduced in 145 cases, quashed in 13 cases, and increased in 6 cases (*ibid.*). Nor have the courts of the states which now allow appellate review of sentences reported any very great increase in workload as a result of such review.

An important factor in keeping the burden on the appellate courts down is to require opinions to be filed only when a sentence is modified or set aside by the reviewing court, as is provided in ABA Standard 3.1(b).²

(2) DEVELOPMENT OF A JURISPRUDENCE OF SENTENCING

The ABA Standards themselves are necessarily silent as to whether it is possible to develop a jurisprudence of sentencing. That one of the objectives of sentence review is "to promote the development and application of criteria for sentencing which are both rational and just is mandated in Standard 1.2(iv), and Standard 3.1(b) would require written opinions in those cases "in which it would substantially contribute to the achievement of the objectives of sentence review as stated in section 1.2".³

From a study made of the American cases in 1937, I concluded that "with a few exceptions, the machinery of appellate review of sentences has not been employed by the courts which possess it as a means of establishing any general sentencing policy." (See Hall, Reduction of Criminal Sentences on Appeal, 37 Col.L.Rev. 521, 762 at 765, 1937.)

Much has been learned about sentencing in the past 35 years and sentencing institutes and conferences for judges are now an essential part of the continuing education of judges. The achievement of a jurisprudence of sentencing now appears possible. Mueller (*op.cit.supra*) believed in 1968 that European appellate courts in their sentence review "make precedent and build tradition." My own answer to this second question is a muted "yes", and a resounding affirmation that sentence review in the federal system would do more to help develop such a jurisprudence of sentencing than any other step which could be taken by any legislative body in the foreseeable future.

(3) THE POWER TO INCREASE SENTENCE

(a) On appeal by the defendant, the power to increase sentences was viewed by many members of the ABA Advisory and Special Committees, and by a

majority of the ABA House of Delegates in February, 1968, as largely "based on the fear that the normal functioning of appellate courts would be seriously burdened by an excessive number of frivolous appeals" (Supp. p. 4). There is now no inhibiting factor of cost, with free transcripts and appointed counsel, as provided in ABA Standard 2.2(b)(iii) and (iv),⁴ and even if appointed counsel "finds his case to be wholly frivolous," his request to withdraw must be accompanied "by a brief referring to anything in the record that might arguably support the appeal," as is required by *Anders v. California*, 386 U.S. 738, 1967. Thus, as is now true of criminal appeals and petitions for certiorari on the merits, the few (less than 10% in the English experience, see Mueller, *op. cit. supra*) meritorious cases would tend to get short shrift in the flood of frivolous papers with which appellate courts would have to cope, if no protective measures are taken.

The English experience with the power to increase sentences on appeal by the defendant also tends to show the unrealistic nature of the fears expressed by some that the power to increase sentences would actually result in prejudice to appellants whose claims to reduction, while not upheld by the court, were not frivolous.

Finally, as the ABA Special Committee pointed out (Standards, Supp. p. 3), "it is just as appropriate for the reviewing court to have the power to correct an excessively low sentence as it is for the court to have power to correct an excessively high one."

On balance, then, I would strongly urge the grant of power to the Courts of Appeal to review the propriety of a sentence on appeal by the defendant, and to increase a sentence where appropriate, as ABA Standards 3.2 and 3.3 would permit.⁵ While the Supreme Court has not spoken directly on the matter, many decisions have upheld such power, and there seems no reason for Congress to decline to do so on constitutional grounds. The cases are collected and discussed in *Robinson v. Warden*, 455 F.2d 1172, CA 4, 1972.

(b) An appeal by the government, with power to raise a sentence, it has been argued, would undoubtedly help to develop a jurisprudence of sentencing.

Defendants with sentences sufficiently inadequate to justify such action by a Court of Appeal could hardly be expected to appeal in sufficient numbers to permit the appellate court to develop general sentencing principles as to the lower limits it deems appropriate, "having regard to the nature of the offense, the character of the offender, and the protection of the public interest," see ABA Standard 3.2 (Supp. p. 1).⁶

The importance of written opinions in the development of such principles is obvious. For example, the Appellate Division of the Superior Court never writes opinions on its actions under Massachusetts Gen. Laws c. 278 § 28A, and as a result no one knows (nor can anyone find out) what (if any) general principles the court may have developed in deciding its cases.

A court, confronted with a large number of cases not meriting extended consideration and sentence reduction, would be unlikely to write opinions about them all. But an occasional appeal by the government of an inadequate sentence which merited increase would clearly warrant an opinion justifying the propriety of a sentence increase. Thus, giving the government the power to appeal for sentence increase would help to develop principles as to the appropriate lower limits of sentences in the same way that appeal by the defendant would develop principles as to the appropriate upper limits of the sentencing discretion of the trial judge—which, it is to be hoped, would remain wide and (in most cases) not to be modified by the appellate court.

The constitutionality of sentence review by the government, and the position of the Board of Governors of the ABA on the matter when it came before them in S. 30 on July 15, 1970, have already been discussed above. If there remain any questions about these matters, I should be happy to attempt to answer them.

Tested by the ABA Standards of Appellate Review of Sentences, neither § 3-11E3 of S. 1 nor S. 716 is a satisfactory bill for the purposes of developing a jurisprudence of sentencing, eliminating gross sentencing disparities between judges, and protecting the Court of Appeals from being overburdened by frivolous appeals. The following principles should guide your Subcommittee in drafting a revised bill on sentence review:

(1) Appeal by the defendant should be of right, as in S. 1, limited to any sentence of death or of imprisonment as in S. 716, or some other "reasonable

limit on the length and kind of sentence subject to review," as in ABA Standard 1.1(b).

(2) The procedure for such review of sentence should be combined with that for review of guilt, as in ABA Standard 2.2.⁷

(3) The Court of Appeal should have power to increase the sentence, as in ABA Standard 3.3,⁸ on appeal by the defendant.

(4) The Courts of Appeal should review the "propriety" of the sentence, as in ABA Standard 3.2.⁹ The tests proposed in S. 1 (whether "the sentencing court's discretion was abused") and in S. 716 ("review the merits of the sentence imposed to determine whether it is excessive") are substantially equivalent to the ABA Standard.

(5) Opinions should be required where the sentence imposed is not affirmed or the appeal dismissed, as in S. 716.

(6) The government should have the right to appeal for review and correction of an inadequate sentence in all cases in which the defendant has a right to sentence review, on the terms and conditions set forth in §3-11E3 of S. 1, which (as Senator McClellan pointed out in 119 Congressional Record, No. 6, January 12, 1973) "derives from present 18 U.S.C. §3576", and was approved by the ABA Board of Governors, July 15, 1970.

In closing, I should like to add that while §3-11E3 of S. 1 does not in any way increase the scope or effectiveness of the appellate sentence review now in force under 18 U.S.C. §3576, the provisions of S. 716 go a long way toward meeting the ABA Standards. Its requirement of "leave to appeal" used (in place of the power to increase sentence) would appear to be "a defensible way to meet the fears of those who are concerned about overburdening the courts with frivolous appeals" (Commentary to ABA Standards, p. 37).

But for the reasons already stated, I would like to place the American Bar Association and the Criminal Law Section's Committee on Reform of Federal Criminal Laws on record as supporting inclusion of the provisions of the ABA Standards Relating to Appellate Review of Sentences into §3-11E3 of S. 1.

FOOTNOTES TO STATEMENT BY PROFESSOR LIVINGSTON HALL

¹ . . . the Advisory Committee has concluded that the state should not be permitted an appeal that could result in an increase of the sentence . . .

There are two basic reasons which lead the Committee to this view. In the first place, there is the prospect of serious constitutional difficulties if an increase is allowed on an appeal by the state. Persuasive arguments can be advanced both under a due process and a double jeopardy provision. While there appears to be no United States Supreme Court precedent directly in point, there is a trilogy of cases which can be read to indicate that an appeal by the state which resulted in an increase would violate the double jeopardy provision of the fifth amendment. See *Ocampo v. United States*, 234 U.S. 91 (1914); *Trono v. United States*, 199 U.S. 521 (1905); *Kepner v. United States*, 195 U.S. 100 (1904). Similar problems would no doubt arise under many state constitutions. . . .

² 3.1 Duties of reviewing court

(b) In those cases in which it would substantially contribute to the achievement of the objectives of sentence review as stated in section 1.2, the reviewing court should set forth the basis for its disposition in a written opinion. Normally, this should be done in every case in which the sentence is modified or set aside by the reviewing court.

³ 1.2 Purposes of review

The general objectives of sentence review are:

- (i) to correct a sentence which is excessive in length, having regard to the nature of the offense, the character of the offender, and the protection of the public interest;
- (ii) to facilitate the rehabilitation of the offender by affording him an opportunity to assert grievances he may have regarding his sentence;
- (iii) to promote respect for law by correcting abuses of the sentencing power and by increasing the fairness of the sentencing process; and
- (iv) to promote the development and application of criteria for sentencing which are both rational and just.

⁴ 2.2 Procedure and conditions

(iii) Unless the defendant is able to retain his own legal assistance or elects not to be represented, an attorney should be appointed as soon as the notice of appeal is filed. Unless it appears inappropriate in a particular instance, it is desirable that the same attorney who represented the defendant at the trial level be appointed to prosecute the sentence appeal;

(iv) The clerk or other responsible official should be required to secure a transcript of the record within [10] days of the filing of the notice of appeal. He should also be required to provide a copy as soon as it is available to the defendant's attorney, to the defendant if he has no attorney, to the state, and to the reviewing court: . . .

⁵ 3.2 Powers of reviewing court: scope of review.

The authority of the reviewing court with respect to the sentence should specifically extend to review of:

- (i) the propriety of the sentence, having regard to the nature of the offense, the character of the offender, and the protection of the public interest; and
- (ii) the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.

3.3 Powers of reviewing court: available dispositions.

Every reviewing court should be specifically empowered to:

- (i) affirm the sentence under review;
- (ii) [with the exception stated in section 3.4.] substitute for the sentence under review any other disposition that was open to the sentencing court; or
- (iii) remand the case for any further proceedings that could have been conducted prior to the imposition of the sentence under review and [with the exception stated in section 3.4] for re-sentencing on the basis of such further proceedings.

⁶ *Ibid.*

⁷ 2.2 Procedure and conditions.

(a) In all cases where sentence is imposed after a trial on the question of guilt, review of the sentence should be available on the same basis as review of the conviction.

(b) In all cases where a sentence is imposed after a guilty plea or the equivalent, review of the sentence, as well as review of the matters which can be raised, could appropriately be governed by a procedure patterned after the following:

(i) Notice of appeal should be required of the defendant within [15] days of the imposition of sentence. The court should advise the defendant at the time of sentencing of his right to appeal and of the time limit, and should at the same time afford him the opportunity to comply orally with the notice requirement. It should be the responsibility of the attorney who represented the defendant at the sentencing stage to advise him with respect to the filing of the notice of appeal, and to assure that his rights in this respect are protected. Both the sentencing court and the reviewing court should be authorized to enlarge the time for filing the notice of appeal for good cause;

(ii) The sentence appeal should be of right, except to courts where appeal from a conviction after trial would be by leave of court. In cases where leave is required, it may be preferable to follow normal procedures instead of a special procedure patterned after this subsection;

(iii) Unless the defendant is able to retain his own legal assistance or elects not to be represented, an attorney should be appointed as soon as the notice of appeal is filed. Unless it appears in appropriate in a particular instance, it is desirable that the same attorney who represented the defendant at the trial level be appointed to prosecute the sentence appeal;

(iv) The clerk or other responsible official should be required to secure a transcript of the record within [10] days of the filing of the notice of appeal. He should also be required to provide a copy as soon as it is available to the defendant's attorney, to the defendant if he has not attorney, to the state, and to the reviewing court;

(v) All papers in support of the merits of the appeal should be required to be filed within [15] days from the time the attorney, or the defendant if he has no attorney, receives the record, unless the time is enlarged upon application to the reviewing court;

(vi) Any response which the state desires to make should be required to be filed within [10] days of the filing of the defendant's papers, unless the time is enlarged upon application to the reviewing court. The state should promptly notify the court if it has decided not to file a response;

(vii) All written submissions may be typed rather than printed;

(viii) In courts of more than three judges, panels of three may be designated to hear the sentence appeal, without a hearing en banc unless the court sua sponte so orders. The appeal should be decided as expeditiously as is consistent with a fair hearing of the defendant's claims. If possible, time should be allocated each week for the hearing of all appeals which are then ready for disposition, and a decision should be rendered as promptly as the case permits.

It may be appropriate in some cases, as where the appeal is patently without merit, to decide the case summarily without a hearing;

(ix) The defendant should commence service of a prison term upon imposition of the sentence, unless bail or the equivalent is granted by the sentencing court or the reviewing court upon special application, or unless either the sentencing court or the reviewing court specifies upon application that the defendant should be detained in a local facility until the sentence has been concluded.

If such a procedure is developed for guilty plea cases, it may also be appropriate to use it in all cases where matters relating to the sentence are the only questions which can be appealed.

⁸ See Footnote 5 *supra*.

⁹ See Footnote 5 *supra*.

Mr. HALL. I also have, Senator, a copy of the Standards Relating to Appellate Review of Sentences as they were adopted by the American Bar Association's House of Delegates in February 1968. With your permission, I would also like to have that copy be received.

Senator McCLELLAN. It may be received, and marked as an exhibit for reference.

Mr. HALL. Thank you.

I would like to add just a little bit about my general expertise in this field, if there is any such thing as expertise in sentencing.

I have been in the field of criminal law ever since I was an assistant U.S. attorney in the Southern District of New York in 1931. Judge Lumbard at that time was the Chief Assistant. So I started my criminal education under Judge Lumbard, and I have listened

and learned from him and Judge Hoffman. Then from 1932 I taught criminal law at the Harvard Law School, until two years ago when I retired. Except for World War II service I have been teaching criminal law continuously.

I also wrote an article on appellate review of sentences in 1937. It was, I think, the first article written on that subject. It is in the 1937 Columbia Law Review 521 and 762 cited on page 7 of my statement.

But I still don't think I am an expert on sentencing, and I don't come before you as that, but rather to speak about what sentencing procedures ought to be.

I should like to emphasize in my oral remarks three points perhaps not sufficiently made in my testimony. Then I should like to comment briefly on proposed rule 35, which was not available at the time my statement was written for submission in March.

My first point is this: All the commentators that I know of who have spoken on or written on appellate review of sentences favor it. I haven't heard anything from the Department of Justice one way or the other; they have made no official comment on it that I know of. But I think it is very striking that there is unanimity that something ought to be done on this matter in all States where it has not been done. There are two purposes which Mr. Blakey wished me to address myself particularly to. One of them is that it is not just a question that some sentences are too high; it is the question of disparity of sentences. There is an accepted sentence range for a certain situation and then some judges give sentences that are much higher than that, and others give sentences that are much lower than that. This is inevitable whenever a single judge, a single person, is given the final say on a matter of discretion, because individuals have prejudices that this crime is worse than that, and that crime is better than something else.

So the fundamental solution which should be sought is the solution to the prejudices of individual judges. The answer to that, as is found in all fields in our Government, is to use several people to pass on the judgment of a single person. In other words, to use a multi-judge court. This is what appellate courts do, more than anything else. They remove the prejudices of individuals, of single justices, from being binding. This is what a Congress does or a committee does. This is important because it indicates that the problem is a double one, not merely reduction of sentences that are too high, but increase of sentences that are too low. Only thus can we get away from the prejudices of a single individual as a judge.

My second point is this: I know of no way to get started in developing what Mr. Blakey has called a "jurisprudence of sentencing," than to get some finite number of tribunals—not the hundreds of judges who give individual sentences—to write opinions on sentencing. Whether it be a panel of district court judges, or of the court of appeals, the important thing is to get groups of judges to consider the difficult situations and to write opinions on them. Then people can consider them, and criminologists, lawyers, and law professors can try to see whether the principles that come out of them will hold up. This just can't be done now. There are many district court judges in the Federal system. Every now and then one will write an

opinion and state why he gave a high sentence or a low sentence, but there is really no body of basic material anybody can use to study. Anybody can see what the disparities in sentencing are; that is a statistical matter. But nobody knows how to start trying to see whether there can be developed in the Federal courts what has been called a "jurisprudence of sentencing."

The time has come, as the judges who preceded me have said, when we ought to try to do something to meet the problem of the individual judge having the final say on sentencing. This is a matter on which he may have prejudices. We need to get a group study of the difficult cases, and to get started with writing opinions.

This third point I want to make is this: The American Bar Association thought this matter—which is only one section out of hundreds that is in your bill, Senator McClellan—was worth an entire volume of standards. One of its 20 Standards for Criminal Justice was wholly devoted to this question of appellate review of sentences. This matter was not merely reviewed by the Advisory Committee in its draft, but in one respect, the question of increase of sentences, the ABA Special Committee charged with overall supervision recommended that the draft should make express provision for increase of sentences by whatever appellate tribunal was used. This came before the House of Delegates as a motion. This was debated and approved by the House of Delegates of the American Bar Association, so this standard was not just adopted *pro forma*, but it was taken up for serious consideration.

I would like to say a few words which are not in my statement with regard to proposed rule 35. It goes a long way to meet the American Bar Association's standards of which I am here to support. If nothing better were done, it would be a matter of great rejoicing if it could be adopted. But it is my thesis on behalf of the American Bar Association, that Congress could do something that could be even more effective, and could be done more quickly. This proposed rule 35 does apply to all crimes, not merely the few listed in S. 1, provided the sentence is 2 years or more. It gives appeal of right to all defendants and there is a certiorari type of review by the panel to allow the court to act summarily. But it provides that the review shall not be in the same proceeding as the appeal on the merits, and it does not involve an appellate court, and these are procedures that the American Bar Association standards recommend.

In closing, I would like to say that all of the specific provisions in the American Bar Association standards are not of equal importance. Some of them are very important, and some of them are of borderline importance. That it should apply to many crimes; that the defendant should have a right to review; that there should be power to increase the sentence whether the defendant appeals; or as the board of governors of the American Bar Association has voted, whether the Government appeals, and that opinions should be written if there is any modification of the original sentence to my mind are the most important standards.

Mr. Blakey asked me specifically to deal with the burden on the courts. Anything that gives any judge extra work is a burden on the courts, but our courts exist to do justice, and I am convinced this is a very important thing. If it puts an extra burden on the courts, it

must be borne. I think the burden can be lessened in two ways. One is by not requiring a hearing, and representation by counsel, if the judges want to dispose of the matter summarily.

Senator McCLELLAN. One question at this point. Judge Hoffman suggested the inconvenience and possibly the impracticality as well as the cost involved in bringing defendants back for resentencing if an increase is permitted.

Mr. HALL. That struck me as a very important thing to be borne in mind. I would handle it by a very simple provision, that if the defendant appealed to have his sentence reduced, and the district attorney filed a special counter-petition that it should be increased, only then would it be necessary for the defendant to be brought back. If the defendant simply filed for a reduction and the district attorney did not file any counter-petition for increase, then provide that the sentence could not be increased and you would not have to bring the defendant to the court.

Senator McCLELLAN. If he gets it reduced, he gets the benefit, and he couldn't complain that he didn't get a hearing.

Mr. HALL. This is my understanding.

Senator McCLELLAN. On the other hand, if the district attorney did appeal and the appellate court found that the sentence was too little and increased it, then he would have to be returned to the lower court for resentencing, is that correct?

Mr. HALL. That is the way I would believe it should be done. It would be the district attorney who decided whether the need for an increase of the sentence, as he saw it, was great enough to justify bringing the defendant back. If the district attorney did not believe that an increase was justified, there would be no cost whatsoever. I think that would meet the *Behrens* case.¹

Allowing the possibility of an increase—experience shows in many jurisdictions, including my own, Massachusetts—has kept the load lower than people believe it would otherwise be. In all frankness I must say that the English courts, which had the power to increase for many years, finally had it taken away from them by statute. It may well be at some future time that we will see this power was never used, and wasn't necessary. But looking ahead, it seems to me to be a very useful thing in this country.

With regard to the jurisprudence of sentencing, in my own Commonwealth of Massachusetts as Judge Lumbard pointed out, there is a panel of three superior court judges who sit in review on their brethren. They have the power to increase the sentence, but the difficulty in Massachusetts is that they never write opinions. It is impossible to develop any sentencing jurisprudence in Massachusetts, because nobody knows what the appellant court thinks. Eventually, somebody with some money and a computer will try to make a study, but you have to go back to the original records, unaided by court opinions. That is why I think it is important that whenever the court changes the sentence, it should write an opinion. Finally, with regard to the power to increase, I would like to point out that if you want a "jurisprudence of sentencing" that will tell the judge how much to sentence a given defendant, you have got to have him

¹ *United States v. Behrens*, 357 U.S. 162 (1963).

told what is too low, as well as what is too high. I don't see how you develop a jurisprudence, where all you do is reduce sentences. The sentencing judge has a doublebarreled problem: What would be too low a sentence? What would be too high a sentence? I think we need the review of the courts on both, and I see no way to get that except to give some kind of power to increase them. If it were on appeal by defendant, the sentence could be increased, if the district attorney counter-appealed and he was brought back for a hearing on resentence. Or it would be provided—as I have urged and the Board of Governors has approved—that the district attorney could also appeal an inadequate sentence on that ground.

Thank you, Senator.

Senator McCLELLAN. Thank you very much.

Any questions?

Mr. BLAKEY. I have only one comment, Senator.

I would like to extend to Professor Hall on behalf of the staff a very sincere thanks for the help he has given and express my appreciation for the difficulties he had in getting here. I understand you had some trouble. Those of us who spend a lot of time worrying about these things appreciate help when we get it.

Mr. HALL. I regard it as a privilege and an honor to be here, sir.

Senator McCLELLAN. Senator Hruska left some questions here. There are four, I believe, Professor Hall, I am going to submit these questions to you and let you write a letter and answer them for the record. Will you do that, please, sir?

Mr. HALL. I will be happy to, Senator.

Mr. BLAKEY. I will arrange to send it to you, Professor.

[Letter in reply to questions appears at p. 5377.]

Mr. HALL. Thank you very much.

Senator McCLELLAN. Thank you very much.

The committee will stand adjourned, subject to call.

[Wereupon at 4 o'clock p.m., the committee adjourned subject to call of the Chair.]

APPENDIX

[Exhibit]

PROPOSED AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE

* * *

Rule 11. Pleas.

(a) Alternatives. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(b) Nolo Contendere. A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) Advice to Defendant. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) The nature of the charge to which the plea is offered; and

(2) The mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for the offense to which the plea is offered; and

(3) That the defendant has the right to plead not guilty, or to persist in that plea if it has already been made; and

(4) That if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial.

(d) Insuring that the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or his attorney.

(e) Plea Agreement Procedure.

(1) In General. The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court shall not participate in any such discussions.

(2) Notice of Such Agreement. If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or nolo contendere in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed, the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report.

(3) Acceptance of Plea. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement.

(4) Rejection of Plea. If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, afford the defendant

the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Time of Plea Agreement Procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of Plea Discussions. Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

(f) Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

* * *

[Exhibit]

EXCERPTS FROM ANNUAL REPORTS OF THE JUDICIAL CONFERENCE

REVIEW OF SENTENCES

In considering further H.R. 6188, the Conference agreed that, because of the heavy additional burden which would be placed on the already overtaxed courts of appeals, it could not approve the principle of appellate review of sentences. The Conference believes, however, that a study should be made to determine some type of review of sentencing and agreed that this was a procedural matter which should be studied by the Advisory Committee on Criminal Rules.

[Judicial Conference, Oct. 29-30, 1970]

* * *

APPELLATE REVIEW OF SENTENCING

Judge Edwards stated that the Conference's views had been sought on H.R. 6188, a bill which would allow either the government or the defendant to file with the district court an application for leave to appeal the sentence to the court of appeals. The bill grants discretionary authority to the court of appeals to review the merits of the sentence to affirm, increase, modify or vacate the sentence. The Conference noted that it had previously considered legislation on the subject of appellate review of sentences and had conditioned its approval (Conf. Rept., March 1967, p. 40). The Conference expressed the view that some form of review of sentences was desirable and requested the Committee on the Administration of the Criminal Law to study the problem further to determine which form of review would most nearly meet the endorsement of the Conference and which forum would most appropriately be utilized for such purposes.

[Judicial Conference, Oct. 31-Nov. 1, 1969]

* * *

APPELLATE REVIEW OF SENTENCING

The Conference considered S. 2722 and H.R. 14343, 89th Congress, which provide for the appellate review of sentences imposed in criminal cases. The Con-

ference agreed with the principle of appellate review on the condition that (1) three years be the minimum appealable sentence; (2) the bills exempt from the provisions for appellate review sentences providing for an indeterminate term (e.g., 18 U.S.C. 4208(a), 5010); (3) that language be added to provide that a decision of a panel of the court of appeals shall be final and there shall be no right to file or have considered an application for an en banc review of such panel decision except that the court of appeals may sua sponte on its own discretion grant further review en banc and (4) language be added to clarify the fact that there is no right of appeal except to the United States court of appeals and that any application for review in the Supreme Court must be by petition for a writ of certiorari to review a claim of constitutional violation.

[Judicial Conference, Mar. 30–31, 1967]

* * *

APPELLATE REVIEW OF SENTENCES

S. 1692, 87th Congress, would provide that a defendant, convicted in a district court of an offense for which no mandatory sentence is fixed by law, may appeal to the appropriate circuit court on the ground that the sentence is excessive. A similar proposal was disapproved by the Conference at its September 1957 session (Conf. Rept., p. 26). Since that time Congress has broadened the discretion of the district judge in fixing sentences by the enactment of 18 U.S.C. 4208, and has also authorized the convening of sentencing institutes under 28 U.S.C. 334. It was the view of the Committee that, in time, these statutes may have the effect of reducing disparity in sentences. Upon recommendation of the Committee, the Conference thereupon disapproved the bill.

The Conference, however, expressed its concern over the problem of disparity of sentences and authorized the Committee to undertake a full study of the problem.

[Judicial Conference, Sept. 20–21, 1961]

* * *

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., May 9, 1973.

G. ROBERT BLAKEY, Esq.,
Chief Counsel, Subcommittee on Criminal Laws and Procedures,
Senate Committee on the Judiciary, Washington, D.C.

DEAR MR. BLAKEY: It is a pleasure to respond to the questions of Senator Hruska, and to comment on several of the questions asked of Judge Lumbard, with regard to the proposals in S. 716 and in proposed Federal Rule of Criminal Procedure 35. The questions, and my answers, are as follows:

Question 1.—The Supreme Court has long recognized that the Federal courts are courts of limited jurisdiction, that is, they have no jurisdiction unless it is specifically granted by statute. This principle has been recognized in the cases at least since Meyer v. Tupper, 66 U.S. (1 Black) 522 (1862) (Taney Ch.J.). The Enabling Act, (c.g. 18 U.S.C. § 3771–72) does not confer on the Advisory Committee power to enlarge the jurisdiction of the Federal courts. How can the issuance of a Rule such as the proposed Rule 35 be justified? Would it not constitute, in effect, the granting of jurisdiction to the review panel to overturn the decision of the sentencing court? How can this be squared with the general principle of Tupper?

Answer to 1.—Proposed Rule 35 does not enlarge the jurisdiction of the federal courts. Federal Rule of Criminal Procedure 32(a)(1) now provides for sentence by the “court”—clearly the District Court—and I know of no statutory provisions dealing with imposition of sentence which limit the “court” to the trial judge. Indeed, 18 U.S.C. § 3562 on Sentence merely refers to the Rules. What the proposed Rule would do is to transfer final sentencing power

to the panel of three judges of the District Court. This would not exceed the powers given to the Supreme Court, by 18 U.S.C. § 3772, to make rules "with respect to any or all proceedings after verdict, etc." Nor would the proposed Rule limit any "right of appeal *** in those cases in which appeals are authorized by law," in violation of the second paragraph of this section.

Question 2.—Turning now to the substance of Rule 35, the Subcommittee's studies of disparity indicate that there is "inter-circuit" disparity as well as "intra-circuit" disparity. How will Rule 35 meet that problem?

Answer to 2.—Proposed Rule 35 would meet the problem of intra-district disparity, but not that of intra-circuit or inter-circuit disparity. S. 716 would meet the problems of both intra-district and intra-circuit disparity, but not that of inter-circuit disparity, since it provides that the decisions of the Courts of Appeals "shall be final and not subject to further appellate review." See § 3742(b).

Question 3.—Assuming that there is a growing problem of court congestion, should the Congress exclude a class of cases [e.g., appellate review of sentences] simply because it is newly pressed on it? Should the Congress not attempt to judge its relative merits with other classes of cases now in the courts? For example, if the Federal courts did less work in review of State criminal convictions through the expanded habeas corpus, would they not have more time to review all aspects of Federal cases?

Answer to 3.—The problem of court congestion will probably be with us for a long time, and whatever plan for appellate review of sentences is adopted should take account of this. Proposed Rule 35 distributes the load among all the federal districts. It contains no provisions for preventing frivolous appeals, but the reviewing panel is permitted to decide cases on the appeal papers without a hearing. S. 716 would concentrate the load in the Courts of Appeals, but leave to appeal must be obtained before a hearing is ordered. If amended to allow increase of sentence on an appeal by the defendant, both the proposed Rule and S. 716 would have built-in protections against frivolous appeals.

Question 4.—Would it be possible through sentencing panels to develop a jurisprudence of sentencing? They probably would not write many opinions. If not, their judgments would be unknown and could not carry force by example. Assuming they wrote opinions, without an appellate power to review them, would the criminal justice system be better off? Would we have anything like authoritative guidance?

Answer to 4.—Each sentencing panel under proposed Rule 35, even if it wrote opinions, could not develop a coherent jurisprudence of sentencing beyond the confines of its own district, and of course few districts would have enough cases to develop even such an intra-district jurisprudence. Under S. 716, each circuit could be expected to develop a jurisprudence of sentencing, and (as in other matters) there would be considerable inter-circuit following of precedent, even though their decisions were final and not subject to review by the Supreme Court under § 3742(b) of the bill.

Question 5.—The literature of appellate review indicates that there are a certain number of appellate judges who would reverse a conviction on evidentiary grounds, a technicality of search and seizure or otherwise if they thought the sentence was too high. [See, e.g., United States v. Anderson, 477 F.2d 833 (8th Cir. 1972)]. Does Rule 35 meet that problem?

Answer to 5.—Proposed Rule 35, by substituting the judgment of three judges for the uncontrolled discretion of the sentencing judge, should result in fewer cases with excessive sentences to tempt the Courts of Appeals to reverse such cases on substantive grounds. Of course, this problem would not exist under S. 716, by which the appellate court itself could reduce the sentence without disturbing the conviction.

Question 6.—Some have suggested that one way to get at leniency by trial courts is to impose minimum mandatory sentences. Might it not be more discriminating to authorize appellate review by the prosecutor where the sentence can be increased?

Answer to 6.—As I pointed out in my written statement, the Board of Governors of the American Bar Association is on record as favoring increase of an inadequate sentence on appeal by the prosecutor. To the extent that some trial courts are too lenient in sentencing, this would solve the problem without the need of limiting sentencing discretion by requiring minimum mandatory sentences, which is proscribed by ABA Standards Relating to Sentencing Alternatives and Procedures § 2.1(c).

Question 7.—Could the Congress meet the issue of overtaking the appellate courts by providing for pleas both to guilt and sentence? Plea bargaining exists now and everyone knows that sentence is a crucial issue discussed. Why not formalize that decision and provide for appellate review only where there was no plea as to sentence? This would make it impossible to a defendant to agree to plead and then to appeal his sentence because he has nothing to lose. Would you comment on this idea?

Answer to 7.—A number of states (including California, see California Penal Code § 1192.5) now permit a defendant to plead guilty on the basis of a plea agreement for a certain disposition, subject to approval of the court. If the agreed disposition is not approved by the court, the plea of guilty may then be withdrawn by the defendant as of right. A similar provision is found in ABA Standards Relating to Pleas of Guilty §§ 2.1 and 3.3, as amended and approved by the ABA House of Delegates in February 1968. Legislation to this effect would cut out appeals from sentence where such a plea was accepted by the sentencing court.

Question 8.—What do you think of the traditional notion that sentencing is a matter of "discretion" as distinguished from "law" and hence unsuited for inclusion in the process of review?

Answer to 8.—Discretionary decisions of trial courts are properly the subject of appellate review in many situations today, including a wide range of discretionary decisions in the field of equity. The test of "abuse of discretion" is a test familiar to all appellate courts. There is no traditional notion that matters of discretion are unsuited for inclusion in the process of appellate review.

Question 9.—On the basis of Robinson v. Warden, 455 F.2d 1172 (4th Cir. 1972) and other cases cited therein, the American Bar Association would now approve the concept of sentence increase on review taken by the government. However, you would not yet consider the issue settled would you?

Answer to 9.—So far as I am aware, there has been no further action by the American Bar Association, or by its officers, its Board of Governors, or any of its Sections and Committees, on the issue of sentence increase on sentence review taken by the Government, since the letter of September 11, 1970, from ABA President Wright, referred to on page 3 of my original written statement to your Subcommittee.

Question 10.—For purposes of drafting them, ought the two ideas be considered separately?

Answer to 10.—The concept of sentence increase on review taken by the Government should not be considered separately from that of sentence reduction on appeal by the defendant. Both concepts are needed to cut down on the number of frivolous appeals, and to develop a jurisprudence of sentencing. See my answers to questions 3 and 4 above. As I noted in my oral testimony, the right of a defendant to a hearing before his sentence is increased could be guaranteed by providing in proposed Rule 35 that increase of sentence would be allowed only if the prosecutor requested it within a reasonable time after the defendant filed his motion to reduce sentence, in which case the defendant would be brought to court for a hearing. If S. 716 were amended to allow increase of sentence (whether on defendant's appeal, or on appeal by the prosecutor, or both), the reviewing Court of Appeals in any grant of an application for leave to appeal could specifically order that the defendant be brought into court at the time the appeal was heard, if it wished to consider an increase of the sentence.

Very truly yours,

LIVINGSTON HALL,
Chairman, Committee on Reform of Federal Criminal Laws
of the Section of Criminal Law of the American Bar Association

Louis B. Schwartz
February 26, 1973

THE PROPOSED FEDERAL CRIMINAL CODE

Comparison of S.1 and the
Recommendations of the National Commission
on Reform of Federal Criminal Laws

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Louis B. Schwartz
February 26, 1973

THE PROPOSED FEDERAL CRIMINAL CODE

Comparison of S.1 and the Recommendations of the National Commission on Reform of Federal Criminal Laws

On January 4, 1973 Senator McClellan (for himself and Senators Ervin and Hruska) introduced a bill, S.1, embodying a new Federal Criminal Code, based in considerable part on the proposals of the National Commission on Reform of Federal Criminal Law. In an accompanying speech,¹ Senator McClellan gave generous praise to the Commission and its staff, described the bill as a "preliminary work product" of his Subcommittee on Criminal Laws and Procedures, and stressed that:

Differences should be confined to particular issues and not generalized to the Code itself. Otherwise the attempt will be vain.

It is no small achievement to have brought before the Congress an intricate, 538-page bill that not only offers an integrated federal criminal code, but also disposes of numerous associated procedural and administrative issues in an ordered way. The Subcommittee has accomplished a technical achievement and, in a few respects indicated later in this memorandum, some substantive improvements on the Commission's draft. On the other hand, S.1 abandons and changes so many of the Commission's proposals as to amount finally to an open confrontation on the basic approach to criminal law.

Where the Commission saw imprisonment as a necessary feature of the penal system, but also as a blunt instrument easily subject to abuse and sometimes counterproductive in terms of public security, S.1 seems committed to the proposition that if some imprisonment is good, more is better. On the question of federal jurisdiction, S.1 does adopt the minimal advance sponsored by the Commission, namely, disentangling the purely technical jurisdictional features of federal definition of offenses from the substantive features. But it abandons the Commission's proposal that Congress declare against federal prosecution, based on the mere technical presence of federal jurisdiction, where only local interests are involved. The Commission's recommendations have been overturned not merely on politically hot issues like capital punishment, gun control, marijuana penalties, and obscenity, but also on scores of points where improvement of the law did not entail political risks.

There is no opportunity presently to cite the instances in which the decisions in S.1 run counter not merely to the Commission's recommendations, but to the decisions of the American Law Institute, the ABA standards of criminal justice, and the trend of recent reforms of state penal codes. The exemplary effect of a federal penal code on further efforts to legislate reform in the states underlines the importance of issues noted below.

1. Cong. Record, Jan. 12, 1973. The speech is hereinafter referred to as "McClellan, p. --", using the paging of the reprint that was widely circulated with copies of S.1.

I - The Sentencing System

Both S.1 and the Commission adopt the concept that the full sentence range authorized for each offense should be divided into two segments: a maximum for the ordinary offender and an "upper range" for specially dangerous offenders. S.1 also adopts the Commission's principle that the terminal part of any long sentence should be served on parole. The vital differences are:

1. The sentences are longer. (See table below)
2. The terminal mandatory parole period is shorter, 2 years as compared to 5, for the longest terms.²
3. Most important of all, cumulative sentences are permitted virtually without restriction. The only qualification is that the total cumulation shall not exceed 75% of the sum of the maxima authorized for each offense.³ Recall that "upper ranges" of sentencing authority are already provided for specially dangerous offenders⁴ and that the Commission had already provided a limited degree of cumulation up to a one-grade step-up of the classification of the most serious offense.⁵ S.1 abandons the Commission's carefully worked out arrangements for handling consecutive state and federal sentences as part of a single treatment program.⁶

Comparative Sentence Limits

	S.1, § 1-4B1 [p.40]	Commission, § 3201 [p.284]
Class A Felony	30 years	30 years
Class B Felony	20	15
by virtue of the difference in the mandatory terminal parole, the maximum prison components for Class B would be	18	10
Class C Felony	10	7

2. Compare § 3-12F3(b) [p.217] of S.1 with the Commission's § 3201(2) [p.284].

3. S.1, § 1-4A5(b) [p.39]. Cf. Commission's § 3204(3) [p.292].

4. S.1, § 1-4B2 [p.41].

5. Commission's § 3204(3) [p.292].

6. Commission Draft § 3204(8) [p.293].

3.

Class D Felony	6	no equivalent
Class E Felony	1	no equivalent felony; 1-year offenses are misdemeanors
Misdemeanor	6 months	See above. Misdemeanors are Class A (1 year) and Class B (30 days).
Violation	30 days	Commission's equivalent is "infraction", which carries no jail.

Of more significance than the table of authorized sentences, is the classification of particular offenses within the table. For example, under S.1: theft of more than \$100,000 carries a maximum of 20 years, and theft of more than \$1,000 carries a maximum of 10 years;⁷ unaggravated forcible rape carries 20 years, and statutory rape (under 16) 6 years;⁸ simple participation in a riot (without incitement, arms, or other aggravating circumstances) carries 6 months. The corresponding maxima under the Commission's Report would be 10 [vs. 20]; 5 [vs. 10]; 10 [vs. 20]; and in the statutory rape case 1 [vs. 6] if the defendant was under 21, and no offense at all if the age difference was less than 5 years.

Minimum Sentences

S.1 permits minimum sentences for all classes of crimes; the National Commission excluded minimum sentences except in connection with the most serious felonies. No special pre-sentence report is required in S.1 S.1 authorizes minima only up to 1/4 the prison sentence; the Commission authorized up to 1/3.⁹

Persistent Misdemeanants

S.1 drops the Commission's innovative proposal to treat repetitive misdemeanants more severely, if for no other reason, in order to be able to reduce the maximum normal penalty for single violations.¹⁰

Sentence Review

The Commission favored appellate review of sentence in criminal cases.¹¹ S.1 limits review of sentence to cases where the "upper ranges" of sentencing power have been

7. § 2-8D3(d)(1) [p.115].

8. §§ 2-7E1 and 2-7E2.

9. Compare S.1, § 1-4B1(c) [p.40] with the Commission's § 3201(3) [p.284].

10. See Commission's § 3003 [p.273].

11. P. 317 of the Final Report.

employed against specially dangerous offenders.¹² Senator McClellan's introductory speech notes Senator Hruska's espousal of broader review of sentence and states that the matter will be explored in further hearings.¹³

Higher Sentence on Retrial

The Commission took no position on whether a defendant whose conviction has been reversed may, on retrial, receive a higher sentence for the same offense.¹⁴ It is contrary to the spirit of the American Bar Association Standards of Criminal Justice which oppose increase of sentence on retrial for the same misconduct.¹⁵ S.1 proposes a peculiarly limited authorization to increase sentence: if, upon appeal, there is a reversal of conviction as to any offense for which a sentence was imposed, but any conviction is sustained, the case must be remanded for re-sentence on that conviction. A defendant might, for example, be convicted on two counts of fraud; the judge imposes 5 years imprisonment on the first count relating to an egregious swindle, and probation on the second count which struck him as based on a technical and minor misrepresentation. If defendant overturns count 1 by appeal, the judge gets an opportunity to give him 5 years on count 2. The device is plainly intended to discourage appeals against erroneous convictions. It appears to violate the Due Process and Double Jeopardy Clauses of the Constitution, and to be quite beyond the holding in *North Carolina v. Pearce*, 395 U.S. 711 (1969), which is cited for it.¹⁷

Probation

S.1 rejects the Commission's expression of preference for non-prison alternatives "unless imprisonment is the more appropriate sentence for the protection of the public." S.1 writes into the "standards" for release on probation, the "need to reinforce the credibility of the deterrent factor of the law." This replaces the Commission's standards which already took account of the need not to "undermine respect for law." S.1 makes it relevant to the probation decision whether the defendant "confessed or expressed remorse"; this is in addition to inquiry into the "character and attitudes of the offender [indicating] that he is unlikely to commit another offense," which both S.1 and the Commission designate. Explicit insistence on "confession" as well as good, law-abiding character raises Constitutional issues and recalls the ignominious confession rituals of Russia and China.¹⁸

S.1 extends the period of probation from 2 to 5 years for misdemeanors. The Commission followed the ABA recommendation against the practice of fixing a prison sentence at the time probation is granted and "suspending execution" of the sentence. S.1 authorizes concurrent prison sentence and probation.¹⁹

12. § 3-11E3 [p.199].

13. McClellan, p. 5.

14. Final Report, p. 317.

15. ABA, Sentencing Alternatives and Procedures (1968) § 3.8, p. 198.

16. S.1, § 1-4A2 [p.38].

17. McClellan, p. 13.

18. Compare S.1, § 1-4D1 [p.44] with Final Draft § 3101 [p.277].

19. Compare the Commission's § 3001(2) [p.271].

Split Sentences

The split sentence is a device found in present law whereby a defendant who is deemed generally qualified for probation, i.e., for whom jail is inappropriate, may nevertheless be given a sentence which combines probation with a short preliminary imprisonment for the shock effect or "to give him a taste of it." Conservative forces within the Commission prevailed in setting a 6-month limit on this type of jailing, rather than 60 days which some favored. S.1 makes it up to 5 years for both felonies and misdemeanors.²⁰

Parole

The first difference, already noted above, is that the mandatory terminal parole is shortened in S.1 so that effective prison terms are lengthened.

S.1 abandons the Commission's standard calling for release on parole "unless the Board is of the opinion [non-reviewable] that his release should be deferred" because of risk of wrong-doing or adverse effect on respect for law or institutional discipline. Instead, S.1 sets no policy in favor of early parole, and imports into parole standards the primacy of "need to maintain respect for law and to reinforce the credibility of the deterrent factor." The requirement that the prisoner be considered for parole as soon as he is eligible and annually thereafter has been dropped. The requirement of special findings of dangerousness for detention beyond five years has been dropped.²¹

Although both draft Codes preclude judicial review of parole discretion, S.1 goes so far as to deny the courts jurisdiction to set aside a parole decision for "denial of Constitutional rights." An exception from the anti-review provision for such cases, found in § 3406 of the Commission's Code, has been dropped. This change probably makes S.1 unconstitutional as an abridgement of habeas corpus. In any event, it is a signal to prisoners and the public of a determination to detain people in prison regardless of infringements of law by the detainers, and of the draftsman's distrust of the judiciary.²²

S.1 drops the crucial parole concept of the Commission's draft, namely, that the period of parole should be proportional to the period of imprisonment that precedes it. Instead, S.1 retains the present irrational practice of giving the

20. See S.1, § 1-4A1(c)(6) [p.37] authorizing detention "within the period of probation." Compare the Commission's § 3106 [p.282] with Study Draft § 3103(4) [p.277].

21. Cf. S.1, § 3-12F3(a) [p.217] with the Commission's § 3401(2) [p.299].

22. Compare S.1, § 3-12F3 [p.217] with the Commission's §§ 3401 ff. [pp. 299 ff.].

shortest period of parole supervision to the prisoner who has been detained longest in jail, presumably because he is the most dangerous.²³

S.1, § 3-12F1, proposes a reorganization of the Parole Administration, essentially to create a class of "Regional Parole Examiners" in addition to "National Parole Commissioners." The latter would review regional decisions, make parole policy, etc. Since the Commission did not take a position on organization of parole, no comparison is called for.

Credit for "Clean Time" on Parole

In case of revocation of parole, under the Commission's Code, the defendant would have had credited against his sentence all time spent on parole up to the misbehavior which led to revocation. S.1 credits him with only 50% of that time.²⁴ This greatly extends the total duration of the "sentence." For example, a man who is sentenced to the maximum for his offense, say 10 years, but is paroled after one year in prison, will have 9 years of parole supervision. If he violates a condition of parole near the end of that time [by no means equivalent to commission of another serious offense] he may have his parole revoked and be recommitted for another 4-1/2 years, making a total of nearly 15 years of subjection to prison plus parole. Under the Commission plan, he would have had no more than 5 years of parole supervision, i.e. an aggregate of 6 years of correctional treatment; and if he managed to stay "clean" nearly to the end of that period, it would have taken another substantial offense and a conviction under the usual requirements of due process to start him on a long term of imprisonment for the new offense.

Civil Disabilities Resulting from Conviction

Persons convicted of certain offenses may be barred from public office or subject to other civil disqualifications. The Commission set a time limit of five years beyond any prison term that the defendant is required to serve. S.1 says "not in excess of the authorized term of imprisonment," which as has been noted above in the description of the sentencing system may be as much as 30 years for a single offense, and much more under the cumulative sentence provisions.²⁵

Fines

S.1 adds to the Commission's draft on this subject a proposal to adopt the Scandinavian "day-fine" system.²⁶ In principle such a scheme assesses fines

23. Compare the Commission's § 3201(2) [p.284] with S.1, § 1-4B1 [p.40] and § 3-12F3 [p.217].

24. S.1 and § 3-12F5(c)(2) [p.221]; cf. § 1-4B3(4) [p. 43] (probation). Compare Commission's § 3403(3)(a) [p.301].

25. Compare S.1, § 1-4A3 [p.38] with the Commission's §§ 3501-5 [pp.305-9].

26. Compare S.1, § 1-4C1(a) [p.43] and McClellan p. 9 with the Commission's §§ 3301-3 [p. 295].

initially in terms of days rather than dollars. Thus a defendant, rich or poor, would be assessed, say, 50 days fine for a particular offense. The actual amount per day would vary depending, roughly, on how relatively difficult it is for each to pay. The suggestion is worth consideration, although it is not clear how different the results would be from the Commission's rule that fines "shall, insofar as practicable [be proportionate to] the burden that payment will impose. . ." Note that, by setting upper limits to the day-fine for various classes of offense, S.1 compromises its principle of equal hardship of fine for rich and poor; but the Commission draft also follows tradition in setting aggregate fine-maxima regardless of the ease with which a rich person could pay a higher-than-maximum fine.

S.1 makes serious inroads in the Commission's policies on imprisonment for non-payment of fine:

(a) The Commission precluded the "Ten-dollar-or-ten-days" type of sentence which thoughtlessly and prematurely decides on the consequences of non-payment. § 3303(3) [p.296]. S.1 drops this constraint.

(b) The Commission set a 30 day maximum imprisonment for default in payment of fine for misdemeanors and lesser offenses. S.1 sets a 60 day maximum applicable even where the offense would have entailed maximum imprisonment of no more than 30 days. Moreover, by reclassifying as Class E felonies offenses carrying 1 year's imprisonment (these would be misdemeanors in the Commission's proposals), S.1 manages to authorize 6 months imprisonment for default in fine, in a situation where the Commission set a 30 day maximum. It should be borne in mind that the original decision of the judge to punish by a fine represented a judgment that imprisonment was inappropriate in the particular case.

II - Federal Jurisdiction

"Compound Offense" vs. "Piggyback"

A great, though baseless, clamor having arisen over the supposed expansion of federal criminal law in the Commission's Code -- our supposed encouragement of a "national police force," etc. -- S.1 undertakes to make a formal concession to this criticism, which focused on the so-called "piggy-back" jurisdiction of § 201(b) of the Commission's Code.²⁷ That provided for federal jurisdiction over specified offenses committed while the offender was engaged in another related federal offense. For example, if the defendant killed a bank officer while engaged in robbing a national bank, he could be federally prosecuted for murder as well as bank robbery; or if he kidnapped someone in the course of a federal civil rights offense, he could be prosecuted federally for kidnapping as well as the civil rights violation. Existing federal law handles the matter in most cases by "grading," for example, providing that bank robbery shall be punished by life imprisonment if someone is killed. The device is employed with no consistency,

27. For an excellent analysis, see Comment, Piggyback Jurisdiction in the Proposed Federal Criminal Code, 81 Yale L.J. 1209 (1972). But cf. 47 N.Y.U. L. Rev. 320 (1972), accepting without examination the "states rights" critique of Liebmann, the young Baltimore lawyer who first raised this issue in the Hearings before the Subcommittee on Criminal Laws, 92d Cong., 1st Sess., Feb. 10, 1971, p. 113, 123 ("undermining state responsibility"). The Liebmann position was characterized as "nonsense" by Attorney General Mitchell at the Hearing, but the term was edited out in the printed report.

complicates the penalty structure, and entails undesirable distortions of the law of homicide.

S.1 essentially lapses back to the old arrangement. The Commission's § 201(b) is dropped. A new concept, "the compound offense" appears, and federal jurisdiction over "compound offenses" is asserted.²⁸ Each substantive crime section then has a subsection designating what are to be "compound offenses" for that crime. The old inconsistencies and complications arise. Rape, but not burglary, is a "compound offense" in the drug chapter, despite the fact that burglary is a common aspect of the addict's quest for drugs. Rape is a "compound offense" for "loan sharking" but not civil rights. Robbery and extortion are surprisingly not "compound offenses" for the large scale illegal gambling offenses.²⁹ New complications are introduced by raising the issue of whether the compound offense is committed "as an integral part of" the federal offense.³⁰

It is not altogether clear whether S.1 contemplates separate prosecution of the compound offense or simply, as under the old law, grading of the basic offense. On the one hand, federal jurisdiction over compound offenses is affirmed, as noted above. On the other hand, the standard formula employed in the substantive crime sections is: "The offense [e.g. armed robbery, a Class B felony under § 2-8D1(c)] is a Class A felony if the following additional offense is committed: murder." Why grade the robbery as Class A based upon proof of murder "as an integral part" of the robbery, if separate prosecution of murder is in order? And, again, why is murder here the only Class A included offense, when aggravated kidnapping, another Class A offense, regularly appears elsewhere as a "compound offense" along with murder?³¹ The "Section Analysis" which accompanied the Committee Print as Exhibit 3 asserted that independent prosecution and upgrading of the underlying offense is contemplated.³²

Eliminating the Preference for State Law Enforcement Responsibility

The greatest single step that could be taken for a genuine resumption of state responsibility for essentially local offenses would be for Congress to establish a policy of federal deference to state enforcement in such cases. This was done in § 207 of the Commission's Draft. S.1 drops that, substituting a non-committal authorization to the Attorney General to adopt regulations with respect to federal investigations and prosecutive discretion.³³ Since the Attorneys General have always

28. § 1-1A5(d) [p.20]; § 1-1A6(f) [p.21].

29. § 2-9F1(e) [p.148].

30. S.1, § 1-1A5(d) [p.20]. Compare the Commission's § 201(b): "in the course of."

31. For example, see § 2-7F1(c)(1) [p.93-94].

32. But cf. McClellan, pp. 5, 10, where piggyback jurisdiction is criticized for permitting prosecution for "two offenses."

33. S.1, § 3-10A1(a) [p.147].

had such authority and have not exercised it in the past to restrain the excesses of federal intervention, it is clear that S.1 will accomplish nothing. So thoroughly does S.1 back away from any attempt to rationalize the distribution of law enforcement responsibilities between the U.S. and the states, that it deletes from the statement of purposes of the Code any reference to defining "the scope of federal interest in law enforcement" and systematizing "the exercise of federal criminal jurisdiction."³⁴

Narrowing the Federal Role in Policing Corruption of State Law Enforcement

One of the paradoxes of the evolution of the new federal penal code is that a bill like S.1 should defer to chimerical apprehensions about "a national police force" while accepting uncritically the most extreme recent and ancient extensions of national jurisdiction over gambling, narcotics, and soft drugs, extortion, fraud, loan-sharking, prostitution, obscenity, bank robbery, theft of goods which happen to be consigned to interstate commerce, etc. At the same time, realistic proposals to curtail federal and rejuvenate local responsibility are turned down. This happened not only in S.1's elimination of the Commission's policy declaration against making a federal case out of every local-impact crime, but also with the progressive whitening down of the Study Draft proposal to affirm a broad federal jurisdiction to deal with the corruption of local law enforcement.³⁵ The American public might be expected, if the issue could be brought to its notice, to favor a federal responsibility to keep local law enforcement honest and efficient rather than a federal responsibility to run a parallel local law enforcement effort through federal officers.

Assimilated Crimes

Since Congress has not previously adopted a comprehensive criminal code, it has in the past provided that, absent an appropriate federal law, the law of the surrounding state should apply to federal enclaves. The Commission recognized that there would remain, even after the enactment of a relatively comprehensive federal code, a large area of minor state regulation which should be "assimilated." It so provided in § 209 [p.22], but took care to avoid a wholesale underwriting of ridiculous state "felonies" by stipulating that no assimilated crime could be graded higher than a misdemeanor. S.1 drops the limitation,³⁶ with the effect of re-instating as federal offenses such "assimilated" crimes as the capital offense of compelling a woman to marry (Arkansas) or the capital offense of boarding a passenger train with intent to commit a felony (Wyoming), not to speak of the extremely severe and in most cases unconstitutional local anti-abortion statutes. S.1 also drops the Commission's provision that an offense shall not be assimilated where it may reasonably be inferred from other congressional legislation "that Congress did not intend to extent penal sanctions to such conduct," although that provision did no more than codify federal decisional law.

34. Compare the Commission's § 102(f) [p.2] with S.1, § 1-1A2 [p.11].

35. Commission's Study Draft, § 1368(2); cf. Final Draft § 1368(2) [p.140] (conventional interstate commerce jurisdiction). In S.1 the jurisdiction is restricted to a few offenses, e.g., bribery, § 2-6E1(e), but not threats or retaliation against local officials in relation to their decisions. §§ 2-6E3(e), 2§6E4(e) [pp.75-76].

36. § 1-1A8 [p.22].

III - Other General Aspects

Comprehensiveness of Code

The Commission recognized that the Criminal Code could not include all minor offenses associated with the myriad regulatory laws. Accordingly, it recognized in § 3006 [p.275] that misdemeanors would continue to be found in parts of the U.S. Code outside Title 18; but it insisted that serious offenses, viz. felonies, be confined to the Criminal Code, where the criminal law specialists of the Judiciary Committees would review them. S.1 contains no provision corresponding to the Commission's § 3006; it is apparently contemplated that at least Class D felonies, punishable by up to 6 years, remain outside the Code.³⁷

Purposes of the Code

S.1, § 1-1A2 drastically revises the statement of purposes found in the Commission's Code at § 102. In place of 6 enumerated goals of the Commission, S.1 announces "the purpose of this Code" as "to establish justice . . . so that . . . the people may be secure." Public security is, of course, a prime aim of the criminal system, and was stated first in the Commission's list. The significance of the S.1 shift can best be appreciated by what has been dropped from the explicit goals:

" . . . to define the limits and systematize the exercise of discretion in punishment"

to make penalties "proportionate to the seriousness of offenses" while allowing individualization for rehabilitative purposes

to safeguard conduct that is without guilt

to prevent arbitrary or oppressive treatment of persons accused or convicted of offenses

S.1 injects a new, false, and dangerous notion that the criminal code "aims at the articulation of the nation's fundamental system of public values" and its vindication through punishment. A criminal code necessarily falls far short of expressing the nation's morality. Many things are evil or undesirable without being at all appropriate for imprisonment: lying, overcharging for goods and services, marital infidelity, lack of charity or patriotism. Nothing has been more widely recognized in modern criminal law scholarship than the danger of creating more evil by ill-considered use of the criminal law than is caused by the target misconduct. Accordingly, the failure to put something under the ban of the penal code is not an expression of a favorable "value" of the non-penalized behavior. See Packer, The Limits of the Criminal Sanction. It is a fatal confusion of values to see the Criminal Code as anything but a list of those most egregious misbehaviors, which, according to a broad community consensus, can be usefully dealt with by social force.

37. See discussion of § 1-1A5 in the Section Analysis accompanying the Committee Print.

Regulatory Offenses

S.1 picks up the Commission's innovating proposal to regularize the use of penal sanctions in connection with vast ranges of administrative regulations.³⁸ But with a difference! The Commission would have kept all of this at the misdemeanor level (except as the persistent misdemeanor provision of § 3003 [p.273] is applicable), and contemplated a fine-only penalty for non-willful, non-dangerous violations. S.1 raises the ante to Class D felony (up to 6 years), and makes the minimal offense subject to 30 days.

Restricting Corporate Criminal Liability and Consumer Remedies

The Commission's Study Draft proposed to make corporations liable for offenses authorized or "recklessly tolerated in violation of a duty to maintain effective supervision" by responsible corporate officials. In addition, the corporation would have been held responsible for misdemeanors committed by lesser officials in furtherance of corporate affairs. This position was reversed by a majority of the Commission in the Final Draft, surviving only as a bracketed alternative. The majority position dropped the "reckless tolerance" basis for liability, and required proof that the misconduct was "within the scope of employment." This diluted basis of corporate liability is adopted in S.1.³⁹

Similarly, S.1 follows the Commission majority in circumscribing the "publicity" sanction against corporate wrongdoing.⁴⁰ The Commission's Study Draft had proposed that corporate convictions (usually of offenses in which consumers are concerned) be given "appropriate publicity" to the "sector of the public interested in or affected by the conviction." As a result of a close vote in the final days of the Commission, this formulation was reduced to the status of an "alternative" in the Commission's Final Report; the principal text now speaks of "notice," rather than "publicity;" and the notice goes only to persons "affected by the conviction." In other words, a corporation convicted of a fraud or product adulteration could be required to publicize its conviction to only the particular people who had bought the particular product. Customers and potential customers of the corporation for other products would not know of its past derelictions.

It should be recalled that the Commission's Study Draft originally proposed to give the sentencing judge discretion to set in motion an appropriate class action for restitution to injured consumers.⁴¹ The Final Draft dropped that with a comment that consumer class actions were then under separate consideration by the 91st Congress. Nothing came of that consideration. The issue is therefore alive in connection with S.1's sentencing provisions.

38. Compare § 2-8F6 [p.124] with the Commission's § 1006 [p.74].

39. § 1-2A7 [p.28]; cf. Commission's § 402 [p.34].

40. Compare the Commission's § 3007 [p.276] with S.1, § 1-4A1(c)(7) [p.37].

41. Study Draft § 405(1)(b) [p.32].

Causation

The difficulties of a statutory definition of causation are obvious, and detailed rules would be counter-productive. But S.1 is less satisfactory than the Commission's draft⁴² in dealing with the common problem of multiple or concurrent causes. The difference can be demonstrated best by example: A shoots V "fatally," i.e., in a way which will almost surely result in V's death. As V is dying, but still alive, B shoots him similarly, and V dies "of both wounds." Under S.1 it is not clear that either A or B could be convicted of murder since neither shot was "an antecedent but for which the result would not have occurred." Under the Commission's draft, it is clear that both could be convicted of murder since each wound was "clearly sufficient to produce the result."

IV - Defenses

Entrapment

S.1 wrecks the Commission's proposal to legislate a "police-conduct" criterion of entrapment.⁴³ After full debate and without recorded dissent, the Commission defined entrapment as conduct "likely to cause normally law-abiding persons" to commit crime. This would have ended the decades-old controversy about the relevance or no of the particular defendant's propensity to commit the crime without inducement. S.1 starts off in the same direction, defining entrapment as "inducement or encouragement [creating] a substantial risk that the [criminal] conduct would be committed by persons other than those who are ready to commit it." But then it adds "A risk is less substantial where a person has previously engaged in similarly prohibited conduct and such conduct is known to such officer as [sic! "or"?] a person assisting him." Whether a policeman's conduct is such as would create a risk of misbehavior by the law-abiding is obviously unaffected by whether the defendant is a recidivist or whether the policeman knows that. The section is singularly calculated to perpetuate existing confusion and injustice.

Statute of Limitations

S.1 greatly extends the current and Commission-proposed periods of limitations, and retains in addition the useless and dangerous escape clauses which the Commission suppressed.⁴⁴ Where the typical limitations period is currently 5 years, S.1 makes it 10 for Class A felonies like aggravated kidnapping or rape. Where the limitations period for misdemeanors presently ranges down from 3 years, the Commission's figure, most offenses which are currently misdemeanors under the revenue code or regulatory laws will move up to 5 years as a result of S.1's classification of 1-year offenses as "felony." The Commission perceived that a statute of limitations which can be tolled by the prosecutor's merely filing a complaint is no substantial clog on prosecution but rather a prod to prosecutor efficiency in going ahead or clearing

42. Compare S.1, § 1-2A2 [p.25] with the Commission's § 305 [p.31].

43. Compare S.1, § 1-3B2 [p.31] with the Commission's § 702 [p.58].

44. Compare S.1, § 1-3B1 [p.30] with the Commission's § 701 [p.55].

his docket. Accordingly, it proposed to eliminate the old statute (adopted when limitations periods were much shorter) suspending the running of the period of limitations while defendant was "fleeing from justice." S.1 changes that venerable phrase to "has no reasonably ascertainable place of abode or work in the United States," which probably means that if you're not listed in a telephone directory you don't get the benefit of the statute. This virtually aborts the statute of limitations, since if the accused could be found he presumably would have been prosecuted already. A most striking relaxation of the statute proposed by S.1 is to suspend the statute during time of war and for three years after Presidential proclamation of termination of hostilities. This drastic provision is said to be derived from 18 U.S.C. § 3287, which proved, upon examination, to be limited to war frauds offenses.⁴⁵

Excuse and Justification

S.1 incorporates an idea that was unsuccessfully pressed on the Commission, namely, that such matters as self-defense, privilege to use deadly force to protect property or prevent crime, should not be drafted out in the Code but should, instead, be indicated as "standards," leaving the courts free to add other defenses and, indeed, to fill in the critical content of the "standards."⁴⁶

The carefully worked out limits on the use of deadly force, found in the Commission's § 607(2), were based on American Law Institute recommendations. They spell out the obligation to take an available safe retreat before killing an aggressor; they authorize deadly force in resisting crime only in the case of certain felonies of violence; they stipulate that the police in dealing with riots may shoot only upon orders of superiors and without unreasonable danger to non-participants. The physician is explicitly protected when he employs dangerous but recognized forms of therapy. The landowner who wishes to defend his property against trespassers is explicitly told that he may not use means threatening serious bodily injury, although of course he will have the right of self-defense if his non-dangerous efforts meet with forcible resistance. The Commission's explicit constraints upon use of force were qualified by a recognition that the need for emergency action will excuse marginally excessive employment of force.⁴⁷

45. McClellan, p. 18.

46. See S.1, § 13A1 [p.29] providing that the enumerated defenses "are not exclusive," and discussion at McClellan, p. 18.

47. Commission's § 608(2) [p.52]. Contrast S.1's formulation which justifies not merely "marginally excessive" use of force but all "excessive use." E.g., last paragraph of § 1-3C4 [p.34]. In a pervasive confusion of "justification" and "excuse," S.1 here declares that "excessive use of force" is "justifiable." The Commission distinguished justification and excuse. See §§ 601, 608. Note also that the Commission extended the "marginal excess" rule to any emergency reaction that precluded "measured reaction." S.1 requires a showing that specified emotions were involved, viz. "consternation, fear, or fright." What of "anger" produced by provocation?

All this disappears in S.1, to be replaced by an admonition to use "proportionate" force which is "believed in good faith to be necessary," an open invitation to diversity of response by both citizens and courts. The "proportionate" force is required to be "reasonable" in the case of self-defense; it need not be so in the case of policemen.⁴⁸ Indeed, law enforcement officers, who are or should be knowledgeable about the law they enforce, are given a special defense of mistake of law, not available to the ordinary citizen.⁴⁹

The American Law Institute as well as the Commission concluded after extensive study that the privilege extended to private citizens to defend one's self and others against personal and property aggressions made it unnecessary and inadvisable to authorize private persons in addition to use force in general crime prevention. But, buried in S.1, § 1-3C4, which is entitled "Defense of Person and Property," is a general crime prevention authority for private persons to use "proportionate" and "reasonable" force in "good faith." See subsection (d). So far as appears, this extends to the most petty offenses and violation of administrative regulations.

Double Prosecution

The Commission proposed, in the spirit of the constitutional provisions against double jeopardy, to bar successive prosecutions by the state and federal governments based on the same misconduct, except in extraordinary circumstances. §§ 707, 708 [pp.62-63]. These provisions have been dropped in S.1.

V - Offenses

Armed Criminal Conduct

The Commission rejected a proposal that use of arms should be made an independent offense, pointing out that being armed had already been made the basis for special severity in sentencing for robbery, burglary, riot, etc., that the authorized sentences for the common law felonies were already higher than any feasible sentence for merely carrying a gun, and that being armed was one of the circumstances triggering the applicability of the "upper ranges" of sentence.⁵⁰ S.1 reverses the Commission's position, § 2-9D6 [p.139]. The chief impact appears to lie in the authorization of double punishment through adding a sentence (up to 6 years) under this section to an "upper range" sentence based on the same facts.

48. Compare § 1-3C3(a) with § 1-3C4 [p.33].

49. Compare § 1-3C3 [p.33] with § 1-3C6 [p.35], and with the Commission's §§ 304 [p.31], 602 [p.44], and 609 [p.52].

50. See discussion following Commission's § 1811 [p. 248].

Attempt

S.1 drops the Commission's requirement that an attempt proceed far enough so that the conduct "strongly corroborates" the firmness of the actor's criminal purpose.⁵¹ The "possession of material adapted" for criminal use is made sufficient as an overt act, without the safeguard excluding material which is equally adapted to non-criminal use. The Commission's proposal to ameliorate sentence for attempts which have not gone far along the path to execution (thus giving some incentive to desist) has been dropped.

Bail Jumping; Escape

S.1 radically up-grades this offense.⁵² Failure to appear for trial on a charge of even a minor misdemeanor, that could have been penalized by no more than 30 days, is classified as a Class D felony (6 years maximum imprisonment). Failure to appear on grave charges is punishable equally with the offense charged, thus entailing up to 30 years regardless of guilt or innocence of the underlying offense.

Comparable dispositions are made for escapes, e.g., from pre-trial detention on minor charges.⁵³

The two sections also illustrate the awkwardness resulting from the substitution of "compound grading" for forthright acceptance of "piggy-back" jurisdiction. The offenses are specially up-graded if "additional offenses" are committed, e.g., murder, aggravated kidnapping, or maiming; but more likely incidental occurrence, e.g., of car theft, burglary, coercion or bribery are not covered.

Civil Rights Offenses

The Commission followed a cautious policy with respect to the civil rights offenses, many of which had recently been defined by Congress in the Civil Rights Act of 1968. S.1 marks some advances. The Commission had retained the old post-Civil-War formulation that required proof of conspiracy to deprive of federal rights, and limited protection to "citizens," whereas S.1 penalizes individual intimidation with respect to the rights of any "person," thus picking up a suggestion made in the Commission's comments.⁵⁴ S.1 also extends the explicit coverage of oppressive acts by federal officials, specifying for example extortion of confessions, denial of counsel, suppression of evidence to secure convictions.⁵⁵

The civil rights laws undertake to prevent forcible interference with speeches and demonstrations against infringement of civil rights. But an issue has arisen as to whether a defendant accused of interfering with a civil rights demonstration should be able to defend on the ground that the speech he sought to suppress was

51. Compare § 1-2A4 [p.25] with the Commission's § 1001 [p.67].

52. Compare S.1, § 2-6B4(c) [p.65] with the Commission's § 1305(2) [p.107].

53. Compare S.1, § 2-6B5 [p.65] with the Commission's § 1306 [p.108].

54. Compare S.1, § 2-7F1(a)(1) [p.93] with the Commission's § 1501 [p.155].

55. Compare S.1, § 2-7F5 [p.97] with the Commission's § 1521 [p.162].

"not lawful." A minority of the Commissioners would have deleted that defense on the ground that the government ought not to have the burden of proving beyond a reasonable doubt the slippery proposition that a speech was "lawful," as against a defendant who had clearly resorted to unlawful violence to suppress the speech. S.1 somewhat narrows the defense by precluding the defendant from arguing that he [mistakenly] thought the speech was illegal.

On the other hand, S.1 constricts the civil rights offenses in some respects. Where the Commission penalized all intimidation and interference by force or threat with voting, S.1 would require proof also that the interference was motivated by racial, religious or sexual discrimination,⁵⁶ or that the intimidation took the form of withholding or threat of withholding governmental benefits.⁵⁷ The view of some of the Commissioners that economic intimidation against exercise of civil rights should be criminalized has not been adopted.⁵⁸

Conspiracy and Facilitation

A reformulation of conspiracy law rejected by the National Commission has been incorporated in S.1⁵⁹ after having been rejected by the Commission. To conspire would no longer be to agree to commit crime, but agreement to "enter into a relationship" having as its objective conduct constituting "in fact" (i.e. regardless of the actor's knowledge) crime. Under subsection (f) of the S.1 formulation, "objectives" embrace any conduct which a person could reasonably expect associates or their associates to engage in.

A drastic alteration of the Commission's approach to conspiracy manifests itself in S.1's authorizing consecutive sentences for conspiracy and for the substantive crime which was the objective of the conspiracy.⁶⁰ Conspiracy is essentially preparation or planning to commit crime. It seems irrational to add to a sentence for committing a crime another sentence for preparing or planning to commit it, since all completed offenses involve preparation or planning. Some would argue that conspiracy is unique because it involves more than one person. That distinction would make sense if conspiracy were actually defined as setting up a special, formidable, multi-party, on-going criminal organization -- i.e. creation and management of the typical organized crime syndicate.⁶¹ But S.1 retains the traditional breadth of conspiracy: two people are enough although nothing remotely resembling "organized crime" is going on. Considering that the ordinary maximum provided by Congress for any given substantive offense is clearly in contemplation of the most common case of a wrongdoer who has "accomplices," it makes a mockery of rational sentencing to subject each of two accomplices -- in non-organized-crime situations -- to double penalties.

56. Compare S.1, § 2-7F3(a)(1) [p.95] with the Commission's § 1511(a) [p.158].

57. S.1, § 2-7F2(a)(1) [p.94].

58. See bracketed phrase "or by economic coercion" in the Commission's §§ 1511 et seq. [pp. 158-161].

59. § 1-2A5 [p.27].

60. Compare the Commission's § 3204(2)(b) [p.291] with S.1, § 1-4A5(b) [p.39].

61. Such a definition was offered in the Commission's Study Draft § 1005, but was rejected in deference to a different approach to organized crime which had just been embodied in the then recently enacted Organized Crime Control Act of 1970. See Comment on p. 290 of the Commission's draft.

S.1 makes every conspirator guilty, as an accomplice, of every substantive offense committed by any co-conspirator in furtherance of the conspiracy if that offense was "reasonably foreseeable," a negligence basis for accomplice liability. In other words, one may be an accomplice in a crime although he did not intend to commit it himself or through others, and did nothing to aid in its commission. A man thus convicted of a substantive offense in which he did not participate may, under S.1 as indicated above, receive consecutive sentences for such offenses in addition to his sentence for conspiracy at a level of severity equal to that for the substantive offense.

Existing conspiracy law is one of the scandals of Anglo-American law on account of the ease with which "agreement" may be inferred, the dangerously loose evidentiary rules, the huge numbers of defendants who can be forced into a single prolonged trial in a remote district, etc. The S.1 formulation is evidently designed to extend the conspiracy net still further, e.g., to get a seller of standard market commodities who "enters into a relationship," i.e. as vendor-vendee, with a buyer who may reasonably be expected to use the material criminally. The Commission's solution of the difficult question of vendor complicity was a section on Facilitation,⁶² which has been dropped with the explanation that conspiracy covers the matter.⁶³ S.1 conspiracy certainly does cover it, and more than adequately: facilitation, in the Commission's version, required knowing "substantial assistance" to a "felony," which must actually ensue; none of these requirements apply in conspiracy under S.1.

S.1 grades conspiracy at the same level as the substantive offense (except Class A felonies), whereas the Commission, treating conspiracy as a special form of inchoate criminality, provided for ameliorated grading as in attempt,⁶⁴ except in special situations where equally severe punishment of conspiracy and completed offense seemed called for, as in espionage.⁶⁵

Contempt

The Commission set a 30-day maximum imprisonment for most summary contempts, and placed restrictions on duplicate prosecution for contempt and for any ordinary criminal offense involved in the contempt. S.1 affirms the power of the court to impose any sentence "it deems necessary in the interest of justice to vindicate its authority."⁶⁶

62. § 1002 [p.68].

63. See McClellan, p. 11, comment to § 1-2A6.

64. See Commission's §§ 1004(6) [p.71] and 1001(3) [p.67].

65. Commission's § 1112(3) [p.86].

66. Compare S.1, § 2-6C6(b) [p.71] with the Commission's § 1341(a) [p.120].

Disclosure of Private Information Filed with the Government

S.1 is a much broader prohibition than the Commission proposed.⁶⁷ It relates to any information rather than any confidential information. It makes all information supplied in connection with applications for government benefits or "regulation, study, or investigation of an industry" restricted. It penalizes knowing disclosure rather than disclosure in knowing violation of duty. Considering that personnel disciplinary measures are available against federal officials who violate duties of confidentiality, the need for broadening the penal provision is not evident, and the Commission in fact suggested that the provision should be narrowed.

Drugs

S.1 provides stiffer penalties, notably 6 months for possession (even for own use) of marijuana, as compared with fine only suggested by the Commission. "Trafficking," defined broadly enough to include non-commercial transfers of user quantities among friends, and covering "abusable" and merely "restricted" drugs, as well as hard narcotics, carries felony penalties without the provision made by the Commission for amelioration for personal use transactions.⁶⁸

Espionage and Classified Information

Although the sections⁶⁹ are superficially much alike, S.1 has introduced crucial changes. The Commission draft confines the offense to situations where national security information is revealed with intent to harm the United States. Under S.1 it is sufficient that the information is gathered for or revealed to a "foreign power" (however friendly) to its "advantage" (however consistent with the interests of the United States). This would be less serious if "national security information" were not so broadly defined (in both drafts), i.e. information "regarding . . . military capability" or, in time of war, any information "which might be useful to the enemy." In modern integrated societies, there is virtually no information about a country that could not be useful to an enemy. To scoop in all such information within an espionage offense that embraces non-hostile communication with friendly governments is to clamp a total censorship on such communication.

S.1 follows the Commission's proposal to distinguish, for grading purposes, between crucial and peripheral defense information, as regards peacetime espionage. Thus, the Commission made peacetime espionage a Class A felony as respects nuclear weaponry, missiles, early warning systems, defense against catastrophic attack, or other major element of defense strategy. S.1 would make peacetime espionage a Class A felony as respects any "means of defense or retaliation against attack." This virtually obliterates the distinction between Class A and Class B espionage.

67. Compare S.1, § 2-6F1 [p.77] with the Commission's § 1371 [p.141].

68. Compare S.1, §§ 2-9E1 et seq. [p.140] with the Commission's §§ 1822 et seq. [p.250].

69. S.1, § 2-5B7 [p.55]; Commission's Draft § 1112 [p.86].

The Subcommittee print, circulated prior to the introduction of S.1, contained provisions penalizing the unauthorized communication of "classified" information, subject to a defense that the classification was improper. This position had been rejected by the Commission.⁷⁰ The Subcommittee's move was widely publicized as an effort to support the government's position in the Pentagon Papers Cases (N.Y. Times v. U.S., 403 U.S. 713, and U.S. v. Ellsberg). The provisions do not appear in S.1; but Senator McClellan has stated that the matter will be reconsidered in the coming legislative hearings.⁷¹

Homicide - Capital Punishment

The changes here appear mainly designed to conform to the decision to overrule the Commission's opposition to capital punishment. The proposed capital punishment provisions follow generally the Commission's alternative draft, provide for a 2-stage proceeding, confine the death penalty to intentional killing, and thus require a distinction, not needed in the Commission's proposals, between homicide that is designed and homicide under circumstances of exceptional recklessness "manifesting extreme indifference to human life."⁷² S.1 has no provision excluding persons under 18 from the death penalty. It drops the Commission's precaution, in connection with the very broad relaxation of evidentiary rules in the death sentence proceeding, that there be an opportunity to rebut, for example, surprise hearsay. S.1 drops the Commission's proposal to narrow the "felony-murder" rule in the same way that New York did.

Obscenity

S.1 radically departs from the Commission recommendation.⁷³ The offense in general is made a Class D felony (6 year maximum) instead of a misdemeanor (1 year maximum). The Commission had reserved felony classification to cases involving children or exposure to non-consenting adults; and even this narrow felony classification was regarded by "a substantial body of opinion" on the Commission as excessively harsh in the light of heavier penalties provided under the persistent misdemeanants provisions.

S.1 penalizes all "trafficking", which includes the creation, import, or transfer, however non-commercial or private. There is no exemption for "non-commercial dissemination to personal associates." Under pressure of its conservative bloc, the Commission deleted the tri-partite definition of obscenity, derived from the Roth case, which appeared in the Commission's Study Draft. S.1 restores a definition of obscenity, but:

- (1) deletes all reference to "social value," which makes the definition unconstitutional,
- (2) adds "sado-masochism" and "violent behavior" to the concept of obscenity, and

70. § 115 [p.90] and Comment.

71. McClellan, pp. 8-9.

72. Compare §§ 2-7B1 and 2-7B2 [pp.84-85] with the Commission's § 1601 [p.173].

73. Compare § 2-9F5 [p.145] with the Commission's § 1851 [p.267].

- (3) calls for the application of the "standards generally accepted in the judicial district," which means that a publisher of materials lawful at the place of publication is subject to federal conviction in the most restrictive district where the prosecutor can get hold of him.

Prostitution

The position of S.1 on prostitution differs from that of the Commission in the following respects: ⁷⁴

- (1) S.1 does not penalize prostitution as such so that the law on this subject applicable to federal enclaves will be "assimilated" from local law, which is extraordinarily divergent, and may include, for example, criminalization of the patron as well as the prostitute, and promiscuous amateur sex within the definition of prostitution. It also means that prostitution on federal enclaves is legalized if the assimilated state law does not penalize it.
- (2) S.1 expands the federal jurisdictional base beyond cases where there has been movement in interstate or foreign commerce to all cases where a "prostitution business" involving 5 or more people has a "direct or indirect affect" on such commerce.
- (3) S.1 does not discriminate for sentence purposes between promoters, owners and managers of prostitution businesses and the lowliest prostitute or other menial employee. All are subject to up to six years imprisonment.

Rape

The Brown Commission sought to restrain the savagery of the so-called "statutory rape" law, under which a youth over 16 is dealt with as a felon if he has consensual intercourse with a girl less than 16, while she is regarded by law as a "victim" even if she initiated the relationship. The Commission excluded all criminality where the boy was of approximately the same age as the girl (he would have to be at least five years older before the law would presume any sort of imposition by him on her); and, at least where the girl was over 13, the offense could be no more than a misdemeanor. S.1 retains the standard 19th Century statutory rape felony.⁷⁵

⁷⁴. Compare S.1, §§ 2-9F3, 2-9F4 [pp. 144-5] with the Commission's §§ 1841 et seq. [pp.263-6].

⁷⁵. § 2-7E2 of S.1. Cf. Commission's § 1645.

Riot

The Commission concluded that mere participation (as distinguished from inciting, arming, etc.) in minor riots was not a matter for federal prosecution except in federal enclaves, and graded the offense as punishable by a maximum of 30 days, in view of the higher penalties available if the rioter can be shown to have committed any other crime.⁷⁶ S.1 extends federal jurisdiction on the "commerce" basis, and grades the offense as a Felony, Class E. Where the Commission had proposed to back up "public safety orders" of law enforcement officers in riot circumstances, by making disobedience an "infraction" (subject to fine only, but laying the basis both for arrest and for compelling compliance), S.1 subjects it to 30-day imprisonment, and drops the requirement that the order have been issued by a supervisory official of substantial rank. S.1 follows the Commission majority in omitting a provision, found in the Study Draft, assuring the right of press and other observers to be present where they did not physically obstruct riot control. See Study Draft § 1804 [p.233].

Inciting riot was graded by the Commission as a misdemeanor except where more than 100 rioters were involved. S.1 provides for sentences up to 10 years where as many as 50 are involved, otherwise up to 6 years.

The Commission sought to insulate the Attorney General from pressures needlessly to involve the federal government in policing small local disorders. It required, as a prelude to federal intervention, that the Attorney General certify that the riot was being substantially furthered from outside the state or would involve 100 persons or more. S.1 drops that.

Sabotage

Perhaps inadvertently, S.1 drops the Commission's provision for "catastrophic sabotage" in peacetime.⁷⁷ This relates to nuclear weaponry, early warning systems, and other elements in intercontinental warfare, where "pre-war" sabotage could be crucial. The Commission penalized this as a Class A felony; S.1 would make it a Class C felony, on a par with, for example, perjury in a civil lawsuit.

Solicitation

There being no general solicitation provision in existing law, the Commission limited its proposal to solicitation of serious offenses; not so in S.1⁷⁸ S.1 also drops the Commission's exclusion of casual proposals not likely to be acted on, by requiring proof of circumstances corroborating the criminal intent and some minimal overt act of concurrence by the solicitee. The Commission thought it advisable to limit the general solicitation offense especially because Congress remains free to incorporate unqualified prohibitions of solicitation in particular contexts, as is presently the law.

76. Compare S.1, §§ 2-9B1 et seq. [p.130] with the Commission's §§ 1801 et seq. [p.241].

77. Compare S.1, § 2-5B4 [p.54] with the Commission's § 1105(2) [p.81].

78. Compare § 1-2A3 [p.25] with the Commission's § 1003 [p.69].

AMERICAN BAR ASSOCIATION SECTION OF CRIMINAL LAW

INFORMATIONAL REPORT OF COMMITTEE ON REFORM OF FEDERAL CRIMINAL LAWS

Cautionary Note

Only *Resolutions*, when approved by the House of Delegates, become official policy of the American Bar Association. The following Report contains NO recommendations or resolutions for specific action by the House. It is merely informative, and represents only the views of the Committee submitting it, and it has NOT been submitted to or approved by either the House of Delegates or the Section of Criminal Law.

At the Denver meeting of the Council of the Section on April 30, 1972, the undersigned Committee was directed to study the proposed new Federal Criminal Code submitted to the President and Congress in January 1971 by the National Commission on Reform of Federal Criminal Laws, and to present its conclusions informally to the Subcommittee on Criminal Laws and Procedures (Senator McClellan, Chairman) of the Senate Committee on the Judiciary and other interested governmental agencies.

Two meetings of our Committee were devoted to consideration of the problems involved, and a list of some 121 sections (out of a total of 392 sections) was held for study by a Reporter (Frank P. Cihlar, Esq., a Washington, D.C. attorney) financed by a \$5000 grant from the Law Enforcement Assistance Agency.

At a third meeting, the Committee took action on the Reporter's recommendations on most of these 121 sections; action on the remainder has been taken by written ballot of the Committee members. Our Committee then voted to favor the enactment of the proposed new Federal Criminal Code, with the amendments recommended by it. The Chairman of the Section has already been authorized by its Council to submit our Final Report to President Meserve, for release by him to interested congressional committees and government agencies, under the conditions set out in the vote of the ABA House of Delegates on July 6, 1971. Until release of this report is authorized, it may not be released for publication in any manner, although it may be considered by those committees and agencies as confidential consultation by the Section of Criminal Law with them "in developing specific proposed legislation to implement reform of the Federal Criminal Laws", as further provided in said vote. We would further point out that in any event "the Association's support of specific legislation resulting from such [release or] consultation will require further approval of such proposed specific legislation by the Board of Governors or the House of Delegates."

Finally, we would point out that our recommendations were approved, in some cases, by narrow majorities of those members of the Committee in attendance at the time they were considered, and it is probable that this Final Report is not wholly satisfactory to any member of the Committee. We are seeking its release because we believe our recommendations were the result of careful study, and if released will be helpful to the congressional committees and Government agencies working on the problem, even though our conclusions have not been submitted for Association or Section approval and must stand or fall on the basis of the validity of the reasons given for their support.

Every section in the proposed Code was considered by our Committee. The following recommendations list all the sections which our Committee wished amended or deleted, with reasons for our recommendations.

Attention is called to the memoranda of recommendations as to a number of sections of the proposed Code which have been submitted by other Sections of

the Association, and these memoranda should be considered along with the recommendations of our Committee set out below.

Respectfully submitted,

COMMITTEE ON REFORM OF FEDERAL
CRIMINAL LAWS.

CHARLES A. BELLOWS,
JACK G. DAY,

Vice Chairman.

WILLIAM H. ERICKSON.

B. JAMES GEORGE, Jr.

LIVINGSTON HALL,

Chairman.

WOODMAN JONES.

PETER W. LOW,

Vice Chairman.

KAREN METZGER.

BEN R. MILLER,

Vice Chairman.

KEITH MOSSMAN.

WILLIAM E. MOUNTS.

ROBERT D. PILIERO.

PAUL K. ROONEY.

Recommendations of Committee on Reform of Federal Criminal Laws of the Section of Criminal Law of the American Bar Association for Amendments to the Proposed New Federal Criminal Code Submitted in January 1971 by the National Commission on Reform of Federal Criminal Laws.

PART A. GENERAL PROVISIONS

§ 103. *Proof and Presumptions.*

Standards of proof and presumptions are more easily comprehended than articulated. No formulation is ever entirely satisfactory; and that of § 103 compares favorably with other contemporary statements. See, *e.g.*, Model Penal Code § 1.12 (Proposed Official Draft 1962); Proposed Rules of Evidence for the United States Courts and Magistrates, Rule 303 (Revised Draft March, 1971). In delineating the nature of the charge to be given the jury, however, § 103(4)(b) may over-state the effect to be given the presumption. It is recommended, therefore, that the section be amended to read “. . . the jury may arrive at that judgment on the basis of the presumption alone since the law permits the jury to regard the facts giving rise to the presumption as sufficient evidence of the fact presumed but the jury is not required to do so.” Compare Proposed Rules of Evidence for the United States Courts and Magistrates Rule 303(c) (Revised Draft March, 1971).

§ 201. *Common Jurisdictional Bases.*

Section 201 has occasioned the most serious criticism of any portion of the proposed Code. The thrust of the criticism has been that the section represents a bold attempt to expand the scope of federal criminal jurisdiction beyond its present limits, establishing for the first time a plenary federal police power at the expense of traditionally state and local prerogatives. This criticism has been fostered in part by the last sentence of the section. There, what was intended as a simple description of a drafting technique, that no explicit jurisdictional base would be stated for substantive offenses which were clearly within the inherent jurisdiction of the federal government (See, *e.g.*, § 1101. Treason.), has been read as a declaration of the most sweeping jurisdiction possible. (It is recommended that the last sentence be stricken and a new jurisdictional base, “anywhere in the United States,” be added which would be

specifically incorporated into the substantive provisions when the inherent jurisdiction of the United States is intended.)

But the criticism has other sources also. First, there is considerable confusion over what the effect of § 201 is intended to be—a confusion fostered in part by such ambiguous phraseology as discussed above. The section, unfortunately, is too often read to provide that there is federal jurisdiction over each and every substantive offense anytime that one of the enumerated bases is present. This, of course, misreads the section as well as the basic struture of the proposed Code. The section merely compiles in one place the variety of possible bases which (with the exception of the inherent jurisdiction noted above) must be explicitly made applicable to a given offense. This is usually done by a reference in the substantive statute itself.

Second, there seems to be considerable shock generated by the mere cataloging of the various jurisdictional bases currently employed in federal law. The growth of federal jurisdiction over the years has apparently gone unnoticed each time a new basis for federal jurisdiction would appear in a discrete statute. Much of the criticism seems to stem from a shock of recognition over what is today the actual scope of federal jurisdiction. It is more appropriate to focus attention on the specific instances in which the exercise of federal jurisdiction should be questioned instead of attacking the bases for that jurisdiction in the abstract.

In this regard, the approach of § 201 (and, in a larger sense, the approach of the Code itself) to the question of federal jurisdiction is to be commended. The section provides a singular mechanism by which the growth of federal jurisdiction can be observed and checked—if restriction is in order. Any observations as to the propriety of the jurisdictional sweep employed for a given substantive offense, therefore, will be contained in the following Remarks under the substantive provisions themselves.

One change should be made in § 201(c), however. As currently formulated, the provision is overly broad. It is recommended that the section be redrafted to cover “public servants” generally only when the proscribed conduct interferes with the performance of their official duties, while limiting total coverage to certain specified public officials (such as the President).

§ 208. *Extraterritorial Jurisdiction.*

The section is basically satisfactory, but it is recommended that subsection (h) be amended to provide for the inclusion of floating ice islands and structures such as oil drilling towers occupied by United States nationals on the high seas. Cf. *United States v. Escamilla*, Crim. No. 210-70, U.S. Dist. Ct., E.D. Vir. (May 10, 1972).

§ 209. *Assimilated Offenses.*

Section 209 should be amended to provide that where the punishment set by the state is in excess of one year’s imprisonment, the offense should be graded at the lowest felony level.

§ 301. *Basis of Liability for Offenses.*

It is recommended that this section be amended to read “only if he engages in voluntary conduct” so as to underscore the Code’s adherence to the concept of voluntariness as a basic precept of criminal law. While inclusion of the term might raise the specter of unintended defenses being raised which fall short of those permitted elsewhere in the Code, this risk is overshadowed by the need to negate any suggestion that any departure from convention jurisprudence is intended. See generally, 1 Working Papers 106-118. It is not necessary, however, to define the term statutorily.

§ 302. *Requirements of Culpability.*

The definitions supplied are far from satisfactory. It is recommended that the provision be re-drafted with special attention given to the Model Penal Code on this point. See Model Penal Code § 202.2 (Proposed Official Draft 1962)

§ 305. *Causal Relationship Between Conduct and Result.*

Section 305 would import a “but for” test of causation into the law; such a formulation, however, is of dubious efficacy. As one observer has noted:

“Legal questions concerning causality occur rather rarely in criminal cases. When questions of causation arise, they will more often be ques-

tions of a factual nature, pertaining to the competence of the expert. But although infrequent in practice, the legal question may be very complex and not easily solved through one short formula." 3 Working Papers 1456. Consequently, it is recommended that this section be deleted and the issue left to judicial development. See also 1 Working Papers 142-147.

§ 401. *Accomplices.*

It is recommended that § 401(1)(b) be amended to read "with intent that conduct constituting an offense occur, he commands, etc." The Report of the Special Committee on the Proposed New Federal Criminal Code of the Association of the Bar of the City of New York [hereinafter cited as "Report of the Special Committee on the Proposed New Federal Criminal Code"], in discussing this section, noted that such amendment would reconcile the section with § 302(5), which establishes the general principle that culpability is not required as to the fact that given conduct is an offense. Left alone, the section is subject to a contrary interpretation.

If this change is adopted, further consideration should be then given to eliminating the resultant redundancy between §§ 401(1)(a) and 401(1)(b). Unless it is intended to reserve the application of § 401(1)(a) to instances of innocent agents (a questionable restriction, at best), there would seem to be little substantive difference between the two sections after such amendment. Any suggestion that 401(1)(a) implies the possibility of a lesser degree of culpability is offset by the import of the term "causes" which suggests a strong nexus between the conduct of the principal and that of the actor.

Section 401 should make it clear that accomplice liability extends to unanticipated offenses which occur in the course of otherwise criminal activity. Thus aiding in the commission of an assault which unexpectedly results in death should be grounds for convicting such accomplice of manslaughter along with the principal actor, a result which may not obtain under the suggested formulation.

It is recommended, also, that the affirmative defense of renunciation and withdrawal be reinstated as subsection (3) of § 401. See Study Draft § 401(3) and the Comment thereto.

§§ 402-409. *Group—Individual Accountability.*

Sections 402, 403 and 409 attempt to come to grips with the complex issues of corporate criminal liability and a correlative notion, individual criminal liability for conduct committed on behalf of an organization. The proposed codification, however, is less satisfactory than existing case law. It has been condemned for an unwarranted cutting-back of the scope of current law in this area (See *c.g.*, Hearings Before the Subcommittee on Criminal Laws and Procedures, 92d Cong., 2d Sess. 1780-1787). While it has not been possible to fully evaluate these criticisms, it is clear that these provisions would work a change in the law, the exact nature of which is unclear. The failure of the Code in this regard may be the result of the piece-meal amendment of the initially proposed revision (Compare these sections with Study Draft §§ 402-406). It may be in part attributable to a premature decision to crystallize a still-to-be-evolved community consensus. On balance, therefore, it is recommended that these sections be deleted and the matter left to decisional law.

§ 503. *Mental Disease or Defect.*

A majority of the Committee present voted that § 503 should be approved as drafted. It should be noted, however, that a substantial minority of the Committee felt that Section 503 should be amended to provide that a mental disease or defect provides no defense unless it negatives an element of the offense. This formulation would eliminate "insanity as a separate defense, according it only evidentiary significance." 1 Working Papers 247. The problems of formulating an intelligible or workable insanity defense need no documentation. No one has been satisfied with the attempts made to date, least of all the psychiatrists and other professionals called upon as expert witnesses to make or break the defense. The minority believed that it would be preferable to direct attention to the more pressing issues concerning (1) civil commitment of the mentally ill acquitted by virtue of their lack of culpability; (2) competency to stand trial; (3) treatment of the mentally ill convicted of a crime; and (4) the corresponding procedural questions that must be answered. See generally 1 Working Papers 229-259.

CHAPTER 6 DEFENSES INVOLVING JUSTIFICATION AND EXCUSE

While the Comment to Code § 601 notes that the rules of Chapter 6 are but a "partial codification" not intended to "freeze the rules", nowhere is this point made in the Code itself. It is recommended, therefore, that any statute include an explicit statement to this effect.

§ 601. *Justification.*

Section 601 should be approved as drafted. The question of whether or not procedural rules should be covered in this Code is more properly raised in connection with § 103.

§ 602. *Execution of Public Duty.*

Section 602(1) should be amended to excuse conduct by a public servant "when he reasonably believes that it is required or authorized by law."

§ 603. *Self-Defense.*

Section 603(a) should be amended to provide that one's resistance to excessive force will be permitted only where "he is resisting force which is clearly excessive in the circumstances," as is now provided under § 603(b)(ii).

§ 605. *Use of Force By Persons with Parental, Custodial or Similar Responsibilities.*

Section 605(a) inexplicably sets age eighteen as the age below which a parent or guardian may justifiably employ reasonable force. No reason is advanced for selecting this age. As parental rights are likely to vary from state to state as well as with the existence or not of factors such as emancipation, the selection of a set age would seem ill-advised. It is recommended, therefore, that the section be amended to cover an "unemancipated minor" instead of a "minor under eighteen years of age."

§ 606. *Use of Force in Defense of Premises and Property.*

Section 606(b) is ambiguous in stating whether the danger referred to is danger arising from the force employed or danger from the termination or prevention of the trespass itself. Evidently, it is the latter that was intended. See Comment, Code § 606. It is recommended that the section be amended to make this reference explicit. Cf. Report of the Special Committee on the Proposed New Federal Criminal Code, 16-17.

The section is likewise unclear as to whether or not the danger to the trespasser need be known to the actor. It would seem appropriate to require the same subjective mental state in this context as is required under § 619(b) in defining "deadly force."

§ 607. *Limits on the Use of Force: Excessive Force; Deadly Force.*

Section 607 exemplifies the point that general standards or principles, rather than rules, are preferred enunciations when endeavoring to express what will or will not constitute a justification or excuse. The prolix draftsmanship manifested in § 607 tends to defy comprehension. It is recommended, therefore, that the section be amended by recasting the justifications for the use of deadly force in more general terms.

§ 608. *Excuse.*

While one may cavil over the particular formula employed to make clear the exact standard of conduct intended, the approach of § 608(2) is basically satisfactory. Some statement reflecting the insight of Justice Holmes (referred to in the Comment to the section) is to be preferred to silence on the issue of the standard to be demanded in an emergency. The term "marginally", however, is nowhere defined and would appear to add nothing but the possibility of confusion in the application of the principle expressed. The term should, therefore, be deleted.

§ 609. *Mistake of Law.*

Section 609 sets out the circumstances under which a mistake of law will be an affirmative defense. Reliance on advice of counsel or of another professional will not suffice, however, to establish the affirmative defense. A proposal that such be a defense where the actor made a prior reasonable effort to ascertain the law was rejected by the Commission because of the possibility of collusion that might arise. 1 Working Papers 138, note. It is not clear how this possibil-

ity is avoided, however, when the Comment notes that a layman's reliance on any of the enumerated statements of law would ordinarily not be in good faith or reasonable unless transmitted to him by a lawyer. An invocation of the defense would in the ordinary case require reliance on advice of counsel.

To avoid putting such questionable emphasis on advice of counsel, it is recommended that the section be amended by substituting for the phrase, "if he acted in reasonable reliance," the language, "if his conduct conformed to an official statement of the law which was subsequently determined to be erroneous or invalid and which was contained in."

§ 610. *Duress.*

Section 610 should be approved as drafted. If the excuse of duress is to be recognized, it should apply to all crimes. The maxim "no necessity justifies the taking of the life of an innocent" is of little help in answering questions as to the disposition that is to be made of the offender. The person subjected to the duress required to make § 610 operative is more to be pitied than condemned.

§ 611. *Conduct Which Avoids Greater Harm [New Section].*

The Study Draft § 608 sets forth a "choice of evils" rule or defense of "necessity" patterned after § 7.13 of the Illinois Criminal Code of 1961. The section is a fine example of a provision which sets forth a basic principle of the criminal law without establishing a rigid rule. As such, it should serve as a stylistic model for the whole of Chapter 6 (see Remarks, §§ 601-619, *supra*).

Substantively, it is not likely that the adoption of such a provision will seriously impair the operation of the criminal process if the experience of one of our most populous states is any guide. On the affirmative side, it is clear that the classic examples of "necessity"—as is equally true of the "duress" cases—will in fact be resolved as these provisions suggest. Unfortunately such resolution will depend upon the more informal processes of prosecutorial discretion and jury nullification. There is much to be said for elevating a rather clear community consensus to the status of a formal principle of the criminal law. It is recommended, therefore, that Study Draft § 608 be added to the proposed Code as § 611.

§ 701. *Statute of Limitations.*

Section 701 should be redrafted in the light of the following observations:

1. While it may be true that a reduction in the period of limitations for certain felonies of from six years to five (*e.g.*, tax fraud prosecutions under 26 U.S.C. § 653) may be insignificant, the final choice of what might appear an arbitrary figure should be considered in the light of the experience of the relevant agencies with the expeditious processing of prosecutions.

2. While a standardization of the periods of limitations is desirable, it does not logically follow that a less serious offense such as a misdemeanor, should have a shorter period of limitations than that provided for more serious crimes. More relevant than the grade of the offense are considerations such as the time required to prepare an adequate case and the likelihood of the evidence becoming "stale" within a given span. This is particularly true when many current felonies are downgraded to misdemeanors in the proposed Code.

3. The provisos in § 701(2)(a), (3) and (4) providing for dismissal of the action would serve to interject the possibility of additional extraneous issues, hearings and appeals into the trial of the case, which would only consume valuable time and resources without corresponding benefit.

4. Section 701(4) should be deleted. A trial-before-the-trial would be required if objection were made by the defendant to the invocation of the section by the Government. If law enforcement efforts against organized crime are currently being hindered by the statutory period, this should be a factor in determining what will constitute an appropriate statute of limitations for those substantive charges most likely to be brought against organized crime figures. Cf. Report of the Special Committee on the Proposed New Federal Criminal Code 19-20.

§ 703. *Prosecution for Multiple Related Offenses.*

Section 703(2), as drafted, raises the possibility a defendant could be put to a separate trial on a charge, even though it was included in a superseding indictment or information with a charge with which it would have had to be tried had it been known to the prosecution at the time of the earlier indictment or information on the other charge. It is recommended, therefore, that

the section be amended to encompass offenses known to the prosecutor "at the time the defendant is arraigned on the indictment or information on which he stands trial." See Report of the Special Committee on the Proposed New Federal Criminal Code 21.

§ 707. *Former Prosecution in Another Jurisdiction: When a Bar.*

Section 707 should be amended by deleting the term "50" where it twice appears in the last sentence. This would obviate the need of a technical amendment should a 51st state join the Union.

§ 708. *Subsequent Prosecution by a Local Government: When Barred.*

Section 708 should be deleted. No compelling reason has been advanced for imposing upon the states a standard composed by the federal government to determine the instances in which a state might exercise its distinct sovereignty by seeking its own conviction for conduct previously prosecuted by the federal government. Moreover, retention of the provision would increase the questions that would have to be asked concerning the appropriateness of providing federal jurisdiction over various offenses. See Remarks, Code §§ 201-219; Cf. Hearings Before the Subcommittee on Criminal Laws and Procedures, 92d Cong., 2d Sess. 927-934.

PART B. SPECIFIC OFFENSES

§ 1001. *Criminal Attempt.*

In establishing a general attempt provisions which would apply to every federal crime, § 1001 may be overly broad. Thus, it might be theoretically possible to attempt a negligent homicide (Code § 1603) by intentionally driving an automobile while drunk when a risk of death to another was present. So, too, in attempting to deal with the problem of impossibility, § 1001 could be read to support the attempted murder conviction of a witch doctor who sincerely believed he could kill his victim by sticking pins in a wooden doll. While it may be beyond the ken of human draftsmanship to eliminate all such hypothetical absurdities and while such constructions may pose a greater threat to law school examinees than to any potential real-life defendant, it is recommended that consideration be given to seeking a formulation which would eliminate such possibilities.

Section 1001 follows the approach of the Model Penal Code § 5.01 (Proposed Official Draft 1962) in equating substantiality with the concept of corroboration. It is suggested that the section might be clearer if it is simply spoke of "conduct corroborative of the actor's intent" and did not employ the term "substantial."

While it might seem illogical to grade an attempt at a lower level than the completed crime (at least when the crime failed of completion through no fault of the actor), it is nonetheless recommended that the section be amended to classify an attempt as one grade less serious than the crime attempted, as this would facilitate plea-bargaining. The current formulation which attempts a compromise position, is unsatisfactory in this respect, since it is (1) not automatic and (2) not clear in establishing which side would bear the burden of proof on the elusive question of proximity.

§ 1002. *Criminal Facilitation.*

Section 1002 should be approved as drafted. The suggestion has been made that this novel extension of criminal complicity to situations wherein the actor lacked a set criminal purpose and had mere knowledge, should be restricted only to the most serious crimes, Class A felonies. The line would be better drawn, however, as it is in the statute, between felonies and misdemeanors.

§ 1003. *Criminal Solicitation.*

Section 1003(1) should be amended by deleting the requirement that the person solicited commit an overt act in response to the solicitation. The requirement of strong corroboration of the intent is sufficient to distinguish legitimate abstract advocacy from criminal incitement. Cf. 1 Working Papers 374-376. Deletion of the requirement would eliminate as an insurmountable obstacle to the prosecution of a serious solicitation the fact that the one solicited spurned the invitation.

§ 1004. *Criminal Conspiracy.*

For the same reasons expressed with regard to the grading of attempts under § 1001, § 1004 should be amended so that a conspiracy is graded one

level below the grade of the most serious offense which is the object of the conspiracy.

One might question the lack of any culpability requirement in the definition of a conspiracy, (compare the consultant's suggestion at 1 Working Papers 385) particularly in the light of the provision in § 1004(1) for finding agreement in the "existence of other circumstances." Under § 302(2), the applicable standard of culpability is willfulness. Literally taken, it would thus be possible to become guilty of a conspiracy by virtue of merely reckless conduct. While it might be argued that such a situation would never result in a conviction, it is not clear that public policy warrants providing the opportunity. It is recommended, therefore, that consideration be given to requiring a higher degree of culpability than that which may be suggested by the section in its present form.

§ 1006. *Regulatory Offenses.*

Section 1006 should be approved as drafted. It would permit the draftsmen of a regulatory offense to simply provide that "a violation of this section should be punished as provided under 18 U.S.C. § 1006" thereby leaving penological considerations to the Criminal Code. Section 3006, on the other hand would govern the grading of pre-existing non-criminal code offenses while providing a basis for Judiciary Committee jurisdiction if a future attempt is made to define a felony outside the Criminal Code.

CHAPTER 11. NATIONAL SECURITY

Sections 1101 through 1129 of the proposed Code define crimes against national security. It is in the nature of the subject matter to require some element of a direct threat to the security of the sovereignty as a distinguishing element of the offenses described. There is, unfortunately, no agreement on exactly what circumstances ought to be regarded as determinative of the existence of such a threat. The response of the proposed Code is to employ various concepts, "international war" (§§ 1101, 1102), "war" (§§ 1105, 1106, 1109, 1110, 1112) and declared war" (§ 1117) as key factors in the crime defined. As the Introductory Note to Chapter 1 indicates, however, no attempt is made to define the term "war" and it is left to "judicial construction depending upon the circumstances." Some commentators have criticized this approach and have urged that the term be legislatively defined. See Report of the Special Committee on the Proposed New Federal Criminal Code 37. If the term is not to be given greater definition by Congress, it would be preferable to delete all references to the term from the substantive definitions of the various offenses involved. In its present form, the Code fails to supply an adequate guide as to the nature of this critical circumstance required to give rise to a finding of guilt under the provisions of Chapter Eleven. The function of the criminal law would be better served by an explicit determination of the public interests being protected by such provisions, if the concept of "war" is to be adhered to in the formulation of national security offenses.

§ 101. *Treason.*

Section 1101 attempts to cast the definition of treason in contemporary language. In so doing, it departs from the language of Article III, Section 3 of the United States Constitution. While such deviance may not be fatal constitutionally, serious constitutional attack on its terms can be anticipated. When this risk is weighed against the dubious benefits of restricting the crime to periods of "international war," it is recommended that the present definition of treason be maintained.

It is further recommended that no prosecution for treason be permitted without prior certification from the Attorney General.

§ 1102. *Participating in or Facilitating War Against the United States.*

In providing that non-nationality (or a reasonable belief thereof) is an affirmative defense, Section 1102 fails to provide for the possibility of dual nationality. Adherence to the non-United States nationality in such a case ought likewise to be an affirmative defense. But see *Kawakita v. United States*, 343 U.S. 717 (1952).

§ 1103. *Armed Insurrection.*

As currently drafted, Section 1103 purports to extend Class A felony treatment to persons playing a major leadership or organizational role in an armed

insurrection. It is not clear, however, whether such treatment (1) obtains only if the insurrection in question involves one hundred persons or more or (2) obtains as to the overall direction, leadership, organization or substantial provision of an insurrection of any size or of any part—no matter how small—of an insurrection involving more than one hundred persons or (3) obtains as to the overall direction, leadership, organization or substantial provision of an armed insurrection of any size or of any part involving one hundred or more person of a larger insurrection. The draft is equally ambiguous on the question of the involvement which may be considered as satisfying the numerical requirement. It is subject to a construction which would treat persons engaged in quelling the insurrection as counting in that number. As the leadership function is in and of itself sufficient premise for upgrading the offense, it is recommended that these ambiguities be eliminated by deleting the words “or any part of such insurrection involving one hundred or more persons” at the end of § 1103(2).

§ 1104. *Para-Military Activities.*

Section 1104 has no antecedent in existing law; it would, for the first time, prohibit what are, in essence, private armies. Its employment of the phrase, “political purposes,” however, gives scant notice as to its sweep. It is recommended, therefore, that the English pattern be adopted which would define the offense in terms of a purpose to “usurp” the functions of the armed forces or police or as conduct which would “arouse reasonable apprehension” that the group is organized or equipped for political purpose. See 1 Working Papers 437–38.

§ 1107. *Intentionally Impairing Defense Functions.*

Section 1107 imports a notion of pecuniary loss (derived from the criminal mischief provisions, § 1705) as a grading device for sabotage-like conduct which occurs outside the framework of wartime. Comment has elsewhere been made on the problem presented by reliance on an undefined concept of “war” as an element of a criminal offense. This section demonstrates the inappropriateness of utilizing a proprietary concept to grade an offense the gravamen of which is threat to the national security. It is recommended that reference to the monetary standard be eliminated in favor of a standard which more fairly correlates with the interest in national security which is at stake, an interest which is seldom translatable into dollars and cents.

As the section incorporates the basic features of the sabotage provision, § 1105, it is recommended that it be integrated into that section and not be treated as a separate statute, a consideration which is equally applicable to section 1106.

§ 1109. *Obstruction of Recruiting or Induction Into the Armed Forces.*

Section 1109 encompasses the solicitation of a violation of section 1108 (i.e., draft resistance) within its terms. This is generally at odds with the basic philosophy of the proposed Code to eschew the inclusion of inchoate offenses in discrete substantive provisions in favor of more generalized treatment. Cf. §§ 1001–1005. Its inclusion here is an apparent effort to up-grade solicitation of such a crime. No cogent rationale is advanced, however, for singling out this particular crime. (The Comment to the section offers the circumstance of wartime by way of explanation; but such consideration might be equally extended to the solicitation of *any* crime in this chapter.) Further, as the definition of solicitation in section 1003 (unlike that of “attempt” in section 1001 and “conspiracy” in section 1004) is not generalized throughout the Code by virtue of section 1005(2), use of the term in this context raises the possibility (1) that, to secure a more stringent penalty than usual, the prosecution need meet a lesser burden of proof insofar as no overt act by the person solicited might be required (compare section 1003(1)); (2) that the renunciation defense provided for in section 1005(3)(b) might be unavailable; and (3) that the prohibition of section 1005(1) against cumulating inchoate offenses might not obtain. On balance, therefore, it is recommended that the phrase “solicits another to violate section 1108;” be deleted.

§ 1111. *Impairing Military Effectiveness by False Statement.*

Section 1111 fails to supply any definition of the term “catastrophe.” It is not clear whether the definition of “catastrophe” in § 1704(4) is appropriately generalized to this section since the concept of “catastrophe” in a wartime sit-

uation may obviously require a more extensive damage or harm than would be required to characterize destruction in peacetime. It is recommended that the term, "catastrophe," be either eliminated or more explicitly defined.

§ 1113. *Mishandling National Security Information.*

Section 1113 purports to retain the basic features of current law. A comparison of this section with 18 U.S.C. § 793 (c), (d) and (e) reveals, however, that unlike present law, the actor need not know that the information in question "could be used to the injury of the United States or to the advantage of any foreign nation." Under the broad definition of "national security information" found in § 1112(4) neither element is required. Thus, the mere reckless revelation of information in disregard of "potential injury to the United States" will result in a violation—a stricter standard of conduct than is required under present law, if the distinction between "reckless" conduct and "knowing" conduct is to mean anything. On the other hand, a knowing revelation of national security information which is known to result in an advantage to a foreign power (though not necessarily injury to the United States) will not be a violation of the section. (A similar problem arises under § 1112 insofar as "advantage of any foreign nation" is not interpreted to be necessarily "prejudicial to the safety or interest of the United States.") It is recommended, therefore, that the section be amended to cover situations where the actor knows of the potential injury to the United States or of the advantage of any foreign nation stemming from his conduct.

§ 1115. *Communication of Classified Information by Public Servant.*

Although the Comment to this section and the Working Papers indicate that an illicit communication must be intentional, such a requirement is not found in the language of the statute itself. Consequently, the required culpability under this statute is "willfulness." See Code § 302(3). It is recommended that language be added to restrict the provision to intentional communications.

As the scope of the term, "communicates," is meant to be broader than the term "reveals" (insofar as the former term would encompass the transmission of material already in the public domain), consideration should be given to either providing for a "public domain" defense, limiting the section to "reveals," or confining the illegality of communicating otherwise public information to wartime situations as is done in § 1112(1)(b). Cf. 1 Working Papers 452.

§ 1116. *Prohibited Recipients Obtaining Information.*

Under § 1116 in its present form, the British Ambassador to the United States would be guilty of a Class C felony if he read the "Pentagon Papers" in the *New York Times*, provided only that when he engaged in that conduct he knew or had a firm belief unaccompanied by substantial doubt that he was doing so, whether or not it was his purpose to do so. It is recommended that the section be re-written to avoid such a result.

By inclusion of the term "solicits" in an attempt to up-grade the inchoate offense, the section raises the problems discussed above in connection with § 1109. Consequently, it is recommended that the term be deleted.

§ 1117. *Wartime Censorship of Communications.*

Section 117 is the only section in the Code to use the phrase "declared war" as an element of an offense. This gives rise to an inference that all other references to "war" or "international war" perforce include undeclared wars. It is recommended, however, that this inference be explicitly considered as part of the larger issues which are discussed above in connection with these terms.

§ 1201. *Military Expeditions Against Friendly Powers.*

Under § 1201, the launching of a devastating air attack against Toronto, Canada, which results in wide-spread loss of life, would be punishable as only a Class C felony, while a single murder cognizable under § 1601 would be a Class A felony. The seriousness of the conduct proscribed under § 1201—whether regarded from the standpoint of the lives implicitly jeopardized by such action or from the consequential impact on the United States' neutrality—is such as to warrant grading this offense as a Class A felony.

The term "air attack" is supposed to encompass "missiles, aircraft and poisonous substances bombed or transmitted through the air from the United States." 1 Working Papers 487. As it is not clear that the term will be inter-

preted so broadly, it is recommended that the section be amended to spell out the scope of an "air attack." Consideration should likewise be given to proscribing the launching of water attacks of similar kind.

Section 109 (am) defines "United States" in the "territorial sense" as including all places subject to the jurisdiction of the United States, except the Canal Zone. Presumably, this would include the extraterritorial jurisdiction provided in § 208 as well as the special maritime and territorial jurisdiction of § 210. It is not clear that § 1201 intended to utilize "United States" in a more explicit and more limited territorial sense.

The definition of "friendly power" in § 1201(2)(a) relies on the phrase "at peace," which is fraught with the same constructional problems as "war." See Remarks on §§ 1101-1129, *supra*. Conceivably, the United States might be treated as being "at peace" with a foreign government or faction for purposes of § 1201 while it was "at war" with the same government or faction for purposes of § 105 since § 1201 speaks as much to the federal government's interest in protecting its sovereignty in international relations as it does to its interest in military security. It is recommended, therefore, that great care be taken to supply definitions of "war" and "peace" which are finely tailored to cover the interests being protected.

§ 1204. *International Transactions.*

Section 1204 attempts to identify the kinds of culpability necessary to render conduct in violation of one or more of the listed regulatory statutes a felony. Under this section, however, the intentional concealment of a violation—no matter how trivial—would give rise to felony treatment. This is hardly the improvement suggested by the Comment to the section.

On the other hand, the section would otherwise appear to require the prosecution to prove that defendant knew that his conduct was (1) unlawful and (2) a substantial violation of the regulatory statute. This could prove to be an impossible burden of proof for even the most flagrant offense. As these results ill-comport with the basic philosophy and objectives of the proposed Code, it is recommended that the section be deleted in favor of either treating all violations of the listed statutes as regulatory offenses subject to § 1006 or criminalizing the more heinous violations by specific legislation. As the offenses are basically mercantile or financial in nature, this latter approach might be peculiarly susceptible of pecuniary gradation.

§ 1223. *Hindering Discovery of Illegal Entrants.*

Section 1223 should be amended to provide that the employment of an alien, with mere knowledge that he is in this country illegally, should be a crime.

§ 1303. *Hindering Law Enforcement.*

Under Section 1303, the requisite criminal intent may be premised upon "facts indicating that he [the person whose prosecution is hindered] is being sought by law enforcement authorities or was indicted, convicted, or sentenced." 1 Working Papers 531. This is so even though the actor may otherwise have a basis for believing that no crime has been committed by one prosecuted. To simply provide that a good faith or reasonable belief that no crime was committed would immunize the actor would pit his judgment against that of the proper authorities where an investigation had in fact commenced. A preferable formulation would be to restrict the offense to persons who believe or have reason to believe that a crime had been committed, or who know or have reason to know that an investigation or prosecution had commenced or was about to commence. Such amendment would also meet any objection that might be raised to the application of § 1303(1)(c) to any document or thing regardless of its admissibility into evidence.

§ 1309. *Introducing or Possessing Contraband Useful for Escape.*

Under § 1309(4), jurisdiction over the substantive offense is present when the facility is a "federal facility." Presumably, this would not include a state or local detention facility which is being used as a temporary hold for a federal prisoner prior to his transfer to a federal institution. As the involvement of a federal prisoner in such activity warrants the attention of the federal government, jurisdiction should extend to state or local facilities used as holds for federal prisoners when the federal inmates are implicated.

In the light of the definitions provided in § 109, the terms "firearm" and "destructive device" are words of art separate and distinct from the concept of

a "dangerous weapon" which has a restricted meaning. If these definitions are to obtain, it is recommended that the adjective "other" be deleted from the phrase "other dangerous weapon" where such appears in subsections (1) and (2) of 1309.

§ 1321. *Tampering With Witnesses and Informants in Proceedings.*

Under current law, the solicitation of "anything of value" as consideration for influencing the solicitor's testimony would be a crime. See, *e.g.*, 18 U.S.C. § 201. Section 1321(2), however, is restricted to the solicitation of "a thing of pecuniary value." These are two different concepts under § 103(a)(1) with the latter being more restrictive in scope. As no rationale has been advanced for restricting the scope of soliciting a bribe, it is recommended that the term "pecuniary" be deleted.

§ 1324. *Harassment of and Communication With Jurors.*

Section 1324 should be amended to provide classification of the offense as a Class D felony. Cf. Remarks, § 3002 *infra*.

§ 1327. *Nondisclosure of Retainer in Criminal Matter.*

Section 1327 attempts to reach a type of surreptitious activity which has previously been prosecuted under the "corrupt endeavors to obstruct the due administration of justice" language of 18 U.S.C. § 1503. Cf. Remarks on Code § 1301, *supra*. While the cases to date have involved employment for monetary consideration, the gravamen of the offense lies in the hidden ulterior motive of the actor and not in the fact that the motivation may be monetary. It is recommended, therefore, that the section be amended to encompass employment without monetary compensation.

§ 1328. *Obstruction of Justice [New Section].*

In order to preserve the scope of current law, it is recommended that a new section be added to the Code which would maintain the sweep of the "corrupt endeavors" provision now found in 18 U.S.C. § 1503.

§§ 1341-1349. *Criminal Contempt.*

While many scholars and commentators have urged the development of standards and criteria by which to direct and guide the exercise of prosecutorial discretion, few, if any, would urge its abolition. And while it may be peculiarly appropriate to preclude any United States Attorney from proceeding to prosecute a contempt of the legislative or judicial branches when they themselves have not seen fit to certify the conduct as contemptuous, it is an altogether different matter to require the initiation of a prosecution upon the recommendation of the branch contemned. Cf. 1 Working Papers 625-26. Consequently, it is recommended that the last sentence of § 1349(1) be deleted if certification is otherwise to be required as to a prosecution for any or all of the contemptuous conduct specified.

§ 1352. *False Statements.*

Section 1352 should be amended to reflect the extension of criminal penalty to false or fraudulent statements designed to influence any institution whose accounts are insured by certain agencies of the federal government, which was effected by the Housing Act of 1970. See 18 U.S.C. § 1014.

The section should be further amended by grading the crime as a Class D felony. See Remarks, § 3002 *infra*.

§§ 1362-1365. *Unlawful Compensation of Public Servants.*

Sections 1362-1365 should be approved as drafted. It has been suggested that the restriction of their scope to thing of "pecuniary value"—as opposed to any thing of value—should be removed. This would track the approach of § 1361, Bribery. As the draftsmen point out, however, these situations lack the bargain element of bribery, and nonpecuniary gifts do not seem a threat to the governmental interest outside the bribery context. 1 Working Papers 701.

§ 1366. *Threatening Public Servants.*

Section 1366, particularly subsection (2) (c), presents serious First Amendments problems by virtue of the over-breadth of the section in encompassing benign "threats" to public officials. It is difficult to justify, for example, a provision which would make it a crime to threaten to work against the reelection of a public official if the official pursues a course of conduct inimical to the in-

terests of the actor. So, too, a threat to reveal past misconduct which is designed to dissuade a public servant from future misbehavior should not be made criminal. Cf. Model Penal Code § 212.5 (Proposed Official Draft 1962). It is recommended, therefore, that such threats be excluded from the scope of the section.

§ 1368. *Federal Jurisdiction Over Offenses in Sections 1361 to 1367.*

Section 1368(2) has been criticized for the jurisdiction provided the federal government over the bribery of state and local officials by virtue of its provisions. See Hearings Before the Subcommittee on Criminal Laws and Procedures, 92d Cong., 1st Sess. 923-24 (Statement of Hon. Andrew P. Miller). This, however, would do little more than maintain the present federal jurisdiction over and interest in such offenses. See 1 Working Papers 709-13. As long as the state and local authorities are not precluded from commencing their own prosecutions (Cf. Remarks, Code § 708), it is recommended that this section be approved as drafted.

§ 1369. *Definition for Sections 1361 to 1368.*

In attempting to exclude "log-rolling" from the ambit of the bribery statutes, § 1369 suggests that the legitimacy of such compromises will be a subject of inquiry by the courts to determine if a violation has occurred. As the desired result can be more clearly achieved by deleting the adjective "legitimate," from § 1369, it is recommended that the section be so amended. Cf. 1 Working Papers 691-92.

§ 1371. *Disclosure of Confidential Information Provided to the Government.*

The approach of current law is to provide a general criminal provision (18 U.S.C. § 1905) which prohibits the disclosure of confidential information given to the government absent explicit authorization for such disclosure. Section 1371 would presumably turn this around and provide criminal sanction only for the disclosure of confidential information which was explicitly to be kept confidential. See 1 Working Papers 724. While this would appear to forward the federal policy of encouraging the disgorgement of information acquired by federal agencies, it would be preferable to provide for a scheme of administrative rules and regulations specifying (1) the exact information which is to be kept confidential by persons in government and (2) the persons upon whom the obligation rests. The violation of any of these rules and regulations could then be made regulatory offenses under Code § 1006. See Comment, Code § 1371.

§ 1372. *Speculating or Wagering on Official Action or Information.*

Section 1372 should be approved as drafted. While it has been suggested that the law ought to go further in prohibiting a public servant from accepting employment in a private company or industry which has benefited from his former official action, it would not be possible to draft a provision of that kind which would not hamper the ability of the government to attract people from the private sector for short periods of time who would be otherwise uninterested in making government a life-long career and who have invaluable contributions to make during even a short tenure.

§ 1401. *Tax Evasion.*

At the present time, the cornerstone of the federal criminal tax penalties is 26 U.S.C. § 7201. Section 1401 would supplant § 7201 and would markedly change the shape of existing law.

1. *The Existence of a Deficiency.*—A prosecution under § 7201 may not be sustained in the absence of a tax deficiency or tax liability due and owing. See *Lawn v. U.S.*, 355 U.S. 339 (1958). Further, the deficiency must be attributable to the fraudulent conduct and it must be substantial. A technical deficiency unconnected with the fraud or an insubstantial deficiency will not support a § 7201 conviction. Section 1401, however, would appear to dispense with this requirement. (The Introductory Staff Note [2 Working Papers 743] would seem to differ with this conclusion; but it does not substantiate its claim with specific statutory reference. The Comment to the section, moreover, explicitly states the intent of the section is to eliminate the deficiency requirement.) It is recommended that the requirement of an existing deficiency owing to the fraudulent conduct be maintained.

2. *Attempts.*—Section 1401(1)(f) was evidently added as an after-thought to the catalogue of discrete, particularized offenses which precede it. See 2 Work-

ing Papers 747, note. Consequently, the section over-all provides an interesting union of philosophically contrasting drafting techniques. Section 1401(1)(a) through (e) manifests an attempt to identify the specific felonious conduct chargeable as tax evasion. This is in contrast to the broad and sweeping terms of § 7201. To this approach, however, the draftsmen decided to append § 1401(1)(f) as a "catch-all" to substantially re-enact § 7201 Comment, Code § 1401. This union produces some anomalous results, not the least of which results from inclusion of the term "attempts" (which has become a work of art in the criminal tax law, with a meaning quite removed from the classic common-law concept) presumably with its current meaning in § 7201. Yet § 1005(2) would dictate that the term be given the quite different meaning supplied under § 1001. It is recommended, therefore, that the term be either deleted from § 1401(1)(f) or explicitly defined as to its scope.

3. *Grading and Sentencing.*—Section 7201 has been construed as requiring a "substantial" deficiency attributable to the evasive conduct to justify the imposition of up to either or both a \$10,000 fine or 5 years in jail. Section 1401, however, relies on the size of the *deficiency*—presumably, irrespective of whether or not the deficiency is in part attributable to nonfraudulent conduct. As it is illogical to grade in relation to the results of non-criminal conduct, it is recommended that any such distinction be restricted to a deficiency attributable to the fraudulent conduct.

The Comment to § 1401 notes that the grading of tax evasion is meant to parallel the grading of other governmental thefts under § 1735. Under § 1735(1), however, a theft must be in excess of \$100,000 to be treated as a Class B felony while under § 1401 (2)(a) a deficiency in excess of \$25,000 will be so treated. No reason is supplied for this disparate treatment and it is recommended that the grading provisions be made congruent on this point.

As a consequence of the grading under § 1401, the maximum term of imprisonment for tax evasion would be increased to 15 years. Code § 3201(1)(b). In the "usual" case, however, this would be set at no more than 10 years (Code § 3202(1)) of which at least three would be on parole (Code § 3201(2)). This is in contrast to the maximum of five years that may be imposed under § 7201. As no reason for increasing the penalty for tax evasion has been advanced, it is recommended that the penalty levels of current law be maintained.

§ 1501. *Conspiracy Against Rights of Citizens.*

Section 1501 retains the present restriction of 18 U.S.C. § 241 to conspiracies against the rights of citizens. As no rationale has been advanced for discriminating against United States nationals or resident aliens, it is recommended that similar protection be extended to any person within the jurisdiction of the United States to the extent he has the rights of a citizen. It is also recommended that the crime be graded as a Class D Felony.

§ 1520. *Deprivation of Rights Under Color of Law.*

Section 1502 should be amended to provide classification of the crime as a Class D felony. The Committee further wishes to suggest that the current application of *Screws v. United States*, 325 U.S. 91 (1945), is far from satisfactory and study should be given to the development of a more workable doctrine.

§§ 1511–1515. *Interference With Participation in Specified Activities.*

Sections 1511–1515 should be upgraded from Class A misdemeanors to Class D felonies.

§ 1516. *Attorney General Certification for Prosecution Under Sections 1511 to 1515.*

Section 1516 should be deleted. The matter is best left to internal administrative controls.

§ 1541. *Political Contributions by Agents of Foreign Principals.*

Section 1541 is one of the few provisions in Chapter 15 to be graded more than Class A misdemeanor and the only section in the chapter to be graded as a felony which did not reflect either a particularly outrageous element (*i.e.*, the use of troops in § 1535) or recent congressional sentiment (*i.e.* §§ 1561–1562). It is recommended, therefore, that the crime be reduced to a Class A misdemeanor.

§ 1601. *Murder.*

The proposed new Code follows the trend of modern codification efforts in departing from the traditional degrees of murder. See, *e.g.*, Model Penal Code § 210.2 (Proposed Official Draft 1962).

If the death penalty is reinstated (an issue on which no recommendation is made), however, consideration should be given to the utilization of this device to serve its historical purpose, the differentiation of capital from noncapital murder. See 2 Working Papers 823. Additionally, it is recommended that the defendant in a homicide case be permitted to plead to the sentence as well as the crime, a procedural reform deserving mention here. See, *e.g.*, Proposed Mass. Criminal Code, Ch. 265, § 2(d).

It is also recommended that § 6101(c) be amended by adding the word, "felonious," before the word, "escape," so as to restrict its scope to serious aggravated situations.

§§ 1611-1612. *Assault.*

The proposed Code provides for only two degrees of assault, simple and aggravated. As the Comment to 1612 notes, however, "[g]rading distinctions finer than those proposed might be made." Aggravated assaults can vary in seriousness as much as homicides and should be provided with a similar penalty range. Such a scheme would also facilitate the process of plea bargaining.

It is recommended that the sections be amended so that, for example, the intentional infliction of a permanently crippling or seriously maiming injury would be at least a Class B felony.

§ 1615. *Threats Against the President and Successors to the Presidency.*

Section 1615 should be approved as written. Some commentators have recommended that subsections (a) and (b) be deleted on the grounds that (a) is merely a specific example of (b), and (b) should be stricken as it (1) creates difficulties of proof and (2) runs afoul of a belief that even nonserious threats ought to be left to the prosecutor's discretion. See Report of the Special Committee on the Proposed New Federal Criminal Code 66-67. Subsection (b) is also subjected to criticism by some for failing to specify the test by which and by whom the threat is to be judged "serious." It would appear, however, that a deletion of the subsections would do little to cure these supposed defects, as the need to determine whether a given utterance was a "threat" or not would presumably still obtain (Cf. *Watts v. United States*, 394 U.S. 705 (1965)), presenting virtually identical questions of proof. It could also be expected that the courts would employ some test such as "to a reasonable man of average sensibilities, taking account of the circumstances, would it be serious, etc." by which to determine whether a "threat" had in fact been made.

The present formulation, on the other hand, obviates any suggestion that any clearly nonserious statement or non-threat was intended to be encompassed by the statute. Such a statement is, after all, preeminently political and care must be taken to winnow out the "political hyperbole" from the serious threat.

Moreover, retention of the subsections, and particularly subsection (a), would actually ease the question of proof somewhat by providing for what would amount to a virtual per se "serious" threat. Thus, an anonymous letter addressed to the President reading, "I am going to shoot you," would suffice to convict its sender of a violation, irrespective of the sender's subjective intent in framing the missive.

§ 1617. *Criminal Coercion.*

Section 1617 should be amended to read as suggested by the Association of the Bar of the City of New York in the Report by the Special Committee on the Proposed New Federal Criminal Code for the reasons set out at pages 67-68.

§ 1619. *Consent as a Defense.*

Section 1619 should be approved as drafted. It has been suggested (1) that the section should be amended to encompass consent to threatened mental anguish and (2) that consent be made a general provision in Part A which would be generalized throughout the Code. But as the draftsmen point out, it is (1) unnecessary to supply such a general defense to crimes where lack of consent is an element of the offense itself and (2) inadvisable to supply such a

general provision in the federal Code since the government itself is the victim in most instances. See 2 Working Papers 849-852.

§ 1635. *Usurping Control of Aircraft.*

The deplorable development of air piracy or "skyjacking" in recent years has yet to be countered by efficacious deterrents. It is imperative, therefore, that the deterrent force of the criminal law be brought to bear upon this crime in its earliest identifiable stage. The current formulation of § 1635 is inadequate in this regard insofar as it would exclude from its coverage the take-over of a fully loaded commercial passenger plane which quite literally failed to get off the ground. The skyjacker who terrorizes passengers and crew while still on the runway, and then is captured before the aircraft is put in flight, is well beyond the point of inchoateness and should be chargeable with the substantive offense. It is recommended, therefore, that the section not be limited to "aircraft in flight."

A definition of the term "usurps" should be supplied to clarify the "legislative and judicial history with respect to mutiny aboard a vessel," which it is intended to incorporate. Comment, Code § 1635. As the term is also employed in § 1805, such a definition might find its place in the general definition section of Chapter 1.

§§ 1641, 1642, 1645, 1646. *Rape, Involuntary Sodomy and Sexual Abuse.*

In this era of equality between the sexes (Cf. the proposed Equal Rights Amendment), it is inappropriate to restrict these offenses to males. Consequently, it is recommended that they be amended to apply to any "person."

§ 1641. *Rape.*

Section 1641 should be approved as drafted. Objection was made to the formulation of § 1641(1)(b). This approach, however, reflects contemporary statutory patterns and should be acceptable. See, e.g., Model Penal Code § 213.1(1)(b) (Proposed Official Draft 1962).

As to the suggestion that § 1641 need be amended to provide Class C felony treatment for acts of consensual intercourse when the "victim" is between 10 and 14 years of age, a careful reading of § 1641 in conjunction with § 1645, Corruption of Minors, would indicate that such is the treatment provided by the proposed Code when the acts are the product of something other than peer experimentation.

§§ 1643-1644. *Sodomy.*

As §§ 1643-1644 parallel §§ 1641-1642, it is recommended that the sections be combined into two sections: rape and aggravated rape.

§ 1645. *Corruption of Minors.*

Section 1645, by implication, makes sexual activity between non-married consenting adults, whether deviate or normal, heterosexual or homosexual, legal. As a practical matter, the "age of consent" is set at sixteen. It is not clear why this particular age was chosen, although one might suspect that a paradigm was found in the current federal statutory rape provision, 18 U.S.C. § 2032. That section, however, speaks to heterosexual conduct with a female below the age of sixteen. While it may be true that young people are increasingly sophisticated sexually (See 2 Working Papers 871), homosexual activity is still sufficiently veiled with opprobrium to make it less than likely that an adolescent would be in a position to meaningfully consent to such conduct. Consequently, it is recommended that the age of consent to homosexual conduct be raised to eighteen. At the same time, a distinction should be made between heterosexual deviate sexual intercourse and homosexual intercourse, with the former being treated in the same fashion as normal sexual intercourse for purposes of determining the age of consent.

§ 1646. *Sexual Abuse of Wards.*

Section 1646 should be amended to increase the grading of the offense to that of a Class C felony. The peculiar leverage available to a person in a superior position of authority or supervision, as detailed in the statute, is akin to the type of nonforceful impositions delineated in Sections 1642 and 1644, which warrant the higher penalty, and the imposition set forth in Section 1646 should be treated similarly.

§ 1647. *Sexual Assault.*

In keeping with the recommendation to increase the penalty level of § 1646 (See Remarks, Code § 1646), it is recommended that the cognate provision of § 1647(e), dealing with sexual abuse not constituting intercourse, be likewise increased in penalty to the level of a Class A misdemeanor.

§ 1646. *General Provisions for Sections 1641 to 1647.*

Section 1648(1) provides the accused an affirmative defense that he reasonably believed his sexual partner to be above the critical age where criminality depends upon an age factor (other than the child's being below ten years of age). This would put the burden of proof on the defendant. Code § 103(3). As the evidence necessary to prove this point would likely require the testimony of the defendant, one may question whether such treatment would not subtly impair the defendant's Fifth Amendment right to refuse to take the witness stand. It is likely, however, that the same problem would arise were the matter made a simple defense since the issue would have to be in the case by some evidence necessary to raise a doubt about it before the prosecution would be put to the task of negating its existence by evidence. Code § 103(1). If the issue can only be raised by the defendant's oral testimony, he is faced with the same dilemma. On the other hand, if he can raise the issue by other evidence, then the objection disappears. The choice, therefore, would be between making allowance for a defense on this issue or not providing for such a defense. On balance, it would seem preferable to retain the provision as drafted.

Section 1648(3) establishes a rule of prompt complaint for prosecution of sex offenses. If a matter which speaks to the credibility of the complainant is to be made a matter of law, it is recommended that the section be amended to entirely exclude from the operation of such rule situations wherein the alleged victim is "less than sixteen years old or unable or otherwise incompetent to make complaint."

On the question of corroboration raised by the bracketed § 1648(5), it is recommended that the testimony of the victim need no corroboration whether on the matter of the fact of intercourse, the use of force or violence, or as to the identity of the attacker. A recent change in the law of the State of New York which required such corroboration made it virtually impossible to secure a conviction for rape. It would be preferable to treat sex crimes as other crimes, making any question of the veracity or credibility of the complainant a matter of fact.

§ 1649. *Definitions for Sections 1641 to 1649.*

Corresponding amendments will have to be made to this section to conform to the changes suggested in the above sections. In particular, a distinction between heterosexual deviate sexual intercourse and homosexual intercourse will have to be made.

Moreover, it is recommended that the term "deviate" be avoided in any definition involving sexual conduct and the reference to "any form of sexual intercourse with an animal" be deleted.

§ 1702. *Endangering by Fire or Explosion.*

It is recommended that the section be amended by deleting the \$5,000 value requirement in § 1702(1)(c). It should suffice that the conduct simply "causes damage to property of another." See Report of the Special Committee on the Proposed New Federal Criminal Code 72.

§ 1703. *Failure to Control or Report a Dangerous Fire.*

It is recommended that the phrase, "a substantial amount of property" be deleted lest the prosecution be put to the difficult task of proving what the accused knew of the property that was threatened by his action. See Report of the Special Committee on the Proposed New Federal Criminal Code 72.

§ 1704. *Release of Destructive Forces.*

Section 1704 should be amended so as to eliminate the requirement of intending a catastrophe if the conduct is intentional and catastrophe in fact results. It should also be amended to raise the grading of subsections (2) and (3) to the level of a Class D felony.

§ 1705. *Criminal Mischief.*

The damaging of property by fire, explosive or destructive device is serious enough to warrant punishment as a Class C felony irrespective of the amount of the damage done and even if committed with mere criminal negligence. Section 1705(2)(a) may be read to reach this result, but it is not clear that the second clause of that subsection reaches negligent as well as willful damage. It could be argued that the lack of an explicit culpability provision means that the standard of willfulness is implied under § 302(3). But that provision is arguably limited to substantive definitions and *not* to grading provisions. Further, the clause inexplicably does not parallel the language of § 1705(1)(c) in that it excludes damage by fire or other dangerous means listed in § 1704(1) while including damage by a destructive device. It is recommended, therefore, that appropriate amendment be made to clearly reach the suggested result.

Section 1705 is otherwise most unhappily drafted in its grading scheme. In developing a grading scheme which relies on an interplay of culpability and pecuniary damage, the section fails by its own complexity. To knowingly damage property in excess of \$5,000 in value, for example, could never be more than a Class B misdemeanor, while to recklessly damage the same property would be a Class A misdemeanor, and to negligently damage property of any value by means of an explosive would be a Class C felony (if the interpretation of § 1705(2)(a) set out above is correct). Existing law, it should be noted, is not nearly as complex. Cf. 18 U.S.C. §§ 1361-1364. As clarity and simplicity are supposed aims of this proposed codification, it is recommended that the section be redrafted to provide a more coherent scheme of grading.

§ 1712. *Criminal Trespass.*

Section 1712 should be approved as drafted. The section is limited in its coverage to the mere naked trespass; as such, the penalty levels provided are more than adequate.

§ 1721. *Robbery.*

Section 1721 should be approved as drafted. The basic federal jurisdiction conferred over interstate extortion is otherwise essentially retained under § 1732.

Consideration should be given, however, to supplying a definition for the term "menaces" which is nowhere expressly defined. Confusion can only result from looking to § 1616 for a definition since that section requires the bodily injury to be "serious."

Section 1721(3)(b) underscores the shortcomings of defining a general term, which does not actually need definition, too narrowly.

§ 1732. *Theft of Property.*

Section 1732 is a consolidated theft provision which would supplant, *inter alia*, existing federal statutes dealing with mail fraud and fraud by wire (respectively 18 U.S.C. §§ 1341, 1343). The section has been seriously scored in testimony already presented to the United States Senate by representatives of consumer protection groups who believe that the new formulation inadequately carries forward a body of case law regarding fraudulent schemes which has proven to be an efficacious tool in curbing efforts to bilk the public. See, *e.g.*, Hearings Before the Senate Subcommittee on Criminal Laws and Procedures, 92d Cong., 2d Sess. 1827-28. It is recommended, therefore, that the section be amended so as to retain the existing law of fraud as it has developed under these statutes.

It is also recommended that the receiving of stolen property be dealt with as a separate section for clarity of application and administration.

The question arises whether each of many letters put into the mails as part of a fraudulent scheme may be treated as a separate offense. The proposed Code does not explicitly speak to this issue but would seem implicitly to permit the treatment of each mailing as a separate offense. See 1 Working Papers 333-334. Under § 703(1), the defendant would be subject to prosecution for each such offense but under § 703(2) would have to endure but a single trial. He could not be sentenced to consecutive sentences which aggregated a term greater than the maximum authorized for the most serious crime involved if each offense was part of the same conduct and had the same objective. Code § 3204.

As regards the pleading of such multiple offenses, "the approach taken in this draft is that of existing case law, which leaves problems of multiplicity of

charges to the traditional judicial remedies of the bill of particulars and the election between counts at the close of the government's case." 1 Working Papers 336.

It might be expected, however, that, in the theft or fraud area, § 1735(7) would provide some countervailing pressure to charge such mailings as a single offense so as to permit the aggregation of the amounts involved for grading purposes.

The problem of multiple counts is most acute when the possibility of multiple offenses is present, but it may also obtain as to a single offense when the prosecutor feels pressure to charge it in a variety of forms to avoid fatal variance. While this problem of pleading is inextricably intertwined with substantive definition, it is questionable whether any code—substantive or procedural—will prove an apt vehicle by which to deal with abuses in this area.

§ 1737. *Misapplication of Entrusted Property.*

Section 1737 should be amended to grade the offense as a Class D felony.

§ 1738. *Defrauding Secured Creditors.*

Section 1738 should be deleted in favor of amending the definition of "property of another" in § 1741(g) to include security interests. While the Comment to the section takes the position that an interference with a security interest differs from theft and should not be treated as seriously, analogous conduct under § 1756 is treated as a Class C felony. It would seem appropriate, therefore, to treat an interference with a security interest as a form of theft so as to bring the sophisticated grading of § 1735 into play. As the mere exercise of control over property by one having a right to possession would in and of itself be ambiguous, proof of the requisite "intent to deprive" required by § 1732 could be expected to require the same quantum of evidence required to prove the specific intent of § 1738.

§ 1739. *Defenses and Proof as to Theft and Related Offenses.*

Section 1739(2)(a) should be amended to include fiduciaries, thereby paralleling the coverage of § 1737 so as to round out the regulatory approach outlined in the Comment to § 1737.

Section 1739(2)(b) should be amended (1) to apply its rule to any person, whether a dealer or not, and (2) to provide that evidence of possessing recently stolen property or property stolen from two or more persons on separate occasions will also constitute prima facie evidence of knowledge that the property was stolen. While the Comment to the section is correct in concluding that the existence of either set of facts without other evidence does not make it more likely than not that the accused had the requisite knowledge, this is not to say that the jury could not draw that inference from those facts alone. Yet to exclude those sets of facts from the category of prima facie evidence might preclude a court from submitting the case to the jury—which is the *only* effect of treating such facts as prima facie evidence. See Code § 103(5). The Tentative Draft, significantly, would have proceeded further and would have given certain of these facts presumptive effect. See 2 Working Papers 935–936.

§ 1741. *Definitions for Theft and Related Offenses.*

In keeping with the above recommendation to retain the current law of mail fraud and wire fraud, it is recommended that the last two sentences of § 1741(a) be deleted. These sentences purport to exclude "puffing" from the definition of "deception" in keeping with current federal case law. See 2 Working Papers 927. It is preferable, however, to leave the question to case law lest the statutory formulation inadvertently provide a new and unintended direction for the resolution of what must perforce be factual determinations and which have been resolved satisfactorily by the courts in the past.

§ 1753. *Deceptive Writings.*

Section 1753, as presently drafted, is "excessively broad and ambiguous in its coverage." Report of the Special Committee on the Proposed New Federal Criminal Code 75. It is recommended that it be made more limited and specific in its coverage by amending subsection (3) to provide that there shall be jurisdiction over an offense only when any of the circumstances enumerated in §§ 1751(3)(b) through (e) are present.

§ 1756. *Bankruptcy Fraud.*

Under existing law, insurance companies are exempted from all federal legislation—including the federal bankruptcy law. Consequently, § 1756 as currently drafted would not reach the fraudulent “milking” of an insurance company which was subject to a state insolvency proceeding. The consequences to interstate commerce in an age of billion-dollar insurance companies are substantial; yet a crime involving such a company is likely to be subjected to prosecution only if the federal government can utilize its resources to proceed against the offender. It is recommended, therefore, that the section be amended to encompass insurance companies which are the subject of state insolvency proceedings where there is a substantial effect on interstate or foreign commerce. Consideration might be given to establishing a monetary limit by which to determine whether or not the effect is substantial since not every effect on interstate commerce need warrant the exercise of federal jurisdiction. Compare the approach of § 1740(3), where authorization of the Attorney General is used as a device to temper reliance on interstate commerce as a jurisdictional device.

§ 1758. *Commercial Bribery.*

In the light of widespread abuses of employee welfare or pension funds that have come to light, it is unwise to reduce the current level of related crimes. It is recommended, therefore, that a crime committed by any one of the individuals named in § 1758(3)(c) be made a Class C felony.

§ 1759. *Unlawful Trafficking in Food Stamp Coupons.*

Section 1759 was added to the proposed Code to permit the penalization of the crime at the felony level. No rationale is advanced for singling out this particular regulatory offense when much more serious economic crimes—such as violations of the federal antitrust statutes—are treated as misdemeanors. It is recommended, therefore, that this section be deleted and that any violations be treated as regulatory offenses.

§ 1771. *Engaging in or Financing Criminal Usury Business.*

It is recommended that a provision dealing with extortionate credit transactions be in the Code, but it is recommended that they do not exceed the scope of current 18 U.S.C. §§ 891-896. See Report of Special Committee on Proposed New Federal Criminal Code 76.

§ 1772. *Securities Violations.*

See Remarks, Code § 3006.

§ 1774. *Antitrust Violations.*

Antitrust violations are conspicuously absent from the proposed codification. If the grading structure of the Code is to be seriously regarded as having a rational foundation, this omission must be remedied. A grading system which would treat “trafficking in food stamps” as a Class C felony if the face amount of the coupons exceeded \$500 while it failed to set more than misdemeanor penalties for intentional antitrust violations resulting in more serious loss, is indefensible. It is recommended, therefore, that a section be added to the Code which would make intentional *per se* violations of the antitrust laws felonies.

§§ 1801-1804. *Riots.*

The need for a distinct federal crime of “riot” is questionable. See 2 Working Papers 1020. It is recommended, therefore, that §§ 1801-1804 be deleted and the matter left to state law.

§ 1814. *Possession of Explosives and Destructive Devices in Buildings.*

Under § 100, the terms “explosive” and “destructive device” are defined to encompass two classes of objects which are so inherently dangerous that their unauthorized introduction into a government building would have to be regarded as presumptively grave. It is anomalous to classify such a crime as a misdemeanor. It is recommended, therefore, that the crime be made a Class C felony.

§§ 1821-1829. *Dangerous, Abusable and Restricted Drugs.*

Sections 1821-1829 present an alternative to the Comprehensive Drug Abuse Prevention and Control Act of 1970. It is recommended that the formulation of the Comprehensive Act be maintained with the proviso that serious violations of its provisions be classified as felonies.

§§ 1841-1849. Prostitution and Related Offenses

As outright prohibitions on prostitution can only prove futile, such efforts should be eschewed in favor of other regulatory devices. It is recommended, therefore, that these sections be deleted. See Report of the Special Committee on the Proposed New Federal Criminal Code 20.

§ 1851. Disseminating Obscene Material

For reasons similar to those expressed above with regard to §§ 1841-1849, it is recommended that this section be deleted.

§ 1861. Disorderly Conduct

Section 1861 provides a uniform definition of disorderly conduct for places within the special maritime and territorial jurisdiction of the United States. As applied within federal enclaves, this provision would supplant state or local regulations governing the same misconduct which would otherwise apply. See Code § 206.

This is to be preferred to the introduction of a multiplicity of such regulatory provisions on federal enclaves.

It is recommended, however, that § 1861(a) be deleted as persons offended by deleterious conduct may be legitimately reluctant to make formal complaint. A vacationer in a national park, for example, might be reluctant to file a complaint he could not pursue because of his expected return to a distant home. It would be preferable, therefore, to permit a prosecution upon the complaint of a law enforcement officer.

PART C. THE SENTENCING SYSTEM

§ 3001. Authorized Sentences

Section 3001(3) should be amended by adding a new subsection (c) which would authorize a sentence to a term of imprisonment under Chapter 32, at least for violation of conditions of probation. Under the doctrine of *Tate v. Short*, 401 U.S. 395 (1971), a person cannot be sentenced to a jail term for his inability to pay a fine if he could not have been imprisoned had he the financial ability to pay. In the light of this ruling the imposition of a meaningful penalty for the commission of an infraction would require the ability to impose a term of imprisonment. A period of up to ten days for violation of conditions of probation would seem to be sufficient, and would distinguish the sentence from that which would be imposed for a Class B misdemeanor. A conforming amendment to § 3201 will be required.

While the amendments just suggested would satisfy the immediate dilemma produced by *Tate v. Short*, the imposition of jail terms for all infractions is unwise. Further study should be given to the development of alternative sanctions.

A new subsection (6) should be added to authorize the court to reduce the offense to a lower category of felony, or to a misdemeanor, and to impose sentence accordingly. ABA Standards, Sentencing Alternatives and Procedures, § 3.7 (Approved Draft 1968) see 2 Working Papers 1303-1304.

Section 3001 should be amended to authorize a court to impose a requirement of restitution as all or part of a sentence for conviction of any offense. A court could condition a sentence of probation upon the making of restitution under § 3103(2)(3) and there is no logic to restricting this authority to the imposition of just this one type of sentence.

§ 3002. Classification of Offenses

While the choice of an appropriate number of classifications by which to grade offenses is to some extent arbitrary, a close reading of the proposed Code would suggest that some of the grading determinations were unduly forced—owing to the restricted number of classifications available. It is recommended, therefore, that § 3002 be amended to provide for the addition of a Class D felony which would carry a maximum term of imprisonment of three years, filling what is felt to be a gap between the proposed Class A misdemeanor category and that of the proposed Class C felony.

§ 3003. Persistent Misdemeanants

Section 3003 should be deleted if the recommendation to provide for a Class D felony is accepted. An acceptance of that recommendation should be understood to require a reappraisal of the classifications currently suggested in Part

B, with many Class A misdemeanors being re-graded as Class D felonies. This would eliminate much of the need to provide the more stringent treatment of § 3003 for repetition of the now more serious misdemeanors.

§ 3004. *Presentence Commitment for Study.*

Section 3004 should be approved as drafted. The very limited period of diagnostic confinement which is authorized would not violate either the letter or spirit of recent United States Supreme Court decisions such as *Jackson v. Indiana*, —U.S.—, 92 Sup.Ct. Repr. 1845 (1972).

§ 3006. *Classification of Crimes Outside This Code.*

Section 3006 should be redrafted so as to merely provide that the penalty structure of the Code will be applicable to crimes defined outside the Code. Cf. Proposed Criminal Code of Massachusetts § 4.

§ 3007. *Special Sanction for Organizations.*

Bracketed § 3007 should be adopted in the proposed Code provided it be amended (1) to apply to *all* convicted defendants and not just organizations and (2) to require the court to specify in its order the exact publicity required.

§ 3101. *Criteria for Utilizing Chapter.*

Section 3101, in creating a presumption in favor of probation, reflects the policy manifested in ABA Standards, Sentencing Alternatives and Procedures, §§ 2.5(c) and (d) (Approved Draft 1968). There would appear to be no need to amend § 3101(2)(c) to include a reference to fines since probation and unconditional discharge are therein contrasted with terms of imprisonment, and a reference to fines is simply not relevant.

Section 3101(3) has been criticized as being biased in favor of the white, middle-class defendant. It is objected that factors such as "no history of prior delinquency or criminal activity" or the leading of "a law-abiding life" are more easily met by someone of the middle or upper classes. Such an argument could as easily be made against the entire fabric of the criminal law. A more persuasive argument would be to claim that the enumerated factors are neither accurate nor valid when making the determination called for; but no one is seriously maintaining that position. The problem of any "bias" in such a list can be countered by the addition of a list of aggravating factors (such as are set out in the Report of the Special Committee on the Proposed New Federal Criminal Code 84) which would emphasize that the gravity of misconduct committed by a favored member of society is all the greater because of his more privileged status. It is recommended, therefore, that such a list of aggravating factors be added to the section.

While the ABA Standards may not require that a list of appropriate reasons for imposing a given sentence need be supplied by the legislature, there would seem to be no advantage in leaving the question to be developed judicially, and some disadvantage, as the period over which uncertainty would obtain as to the sufficiency of a given reason would be unduly prolonged. It is recommended, therefore, that a list of both aggravating and mitigating factors be supplied by statute. By way of a technical improvement, it is also recommended that such lists be introduced by the term "whether."

§ 3102. *Incidents of Probation.*

Section 3102 reflects the ABA Standard in providing a legislatively fixed time for sentence not involving confinement. ABA Standards, Sentencing Alternatives and Procedures, § 2.3(b)(ii). It has been suggested that the section be amended to preserve the power of the sentencing judge to establish a probationary period less than that set by the statute. The proposed formulation should be approved in this regard, however, as it is preferable to require an affirmative decision to discharge the defendant at a point in time when such release is deemed warranted and not at a point when it *may* be desirable.

§ 3103. *Conditions of Probation; Revocation.*

Section 3103 should be essentially approved as drafted. As it is anticipated that a sentence to probation will be subject to appellate review, any unreasonable conditions (or penalties for violations thereof) may more properly be considered by a reviewing court. It is recommended, however, that § 3103(2)(h) be made two separate paragraphs, one dealing with drugs and one with alco-

hol. Subsection (1) should also be redrafted so as to require individualization by relating the conditions imposed to both the offense involved and the character of the offender.

§ 3104. *Duration of Probation.*

Section 3104(1) should be amended to read that a period of federal probation "shall also run concurrently with any federal, state or local probation or parole term for another offense to which the defendant is or becomes subject during the period."

§ 3107. *Use of Rehabilitation Programs.* [*Proposed New Section.*]

The suggestion to add a new § 3107 to the proposed Code should not be approved as it would not add to the powers of the court already granted.

§ 3201. *Sentence of Imprisonment: Incidents.*

Section 3201 should be amended to reflect the recommendation made as to § 3001, to authorize a short term of imprisonment for violation of conditions of probation for infractions.

The section should also be amended to avoid the anomaly that a sentence to a sixteen-year term would result in a maximum of eleven years in confinement, while a sentence to a fifteen-year term would result in a possible twelve years of confinement.

§ 3204. *Concurrent and Consecutive Terms of Imprisonment.*

Section 3204 should be amended by including the bracketed portion of subsection (3) permitting, thereby, the imposition of a Class A felony maximum for an aggregation of Class B felonies. The category of Class B felonies, as presently set forth in the proposed Code, contains offenses which are sufficiently egregious—particularly in the aggregate—to warrant imposition of the longer term. See Comment Code § 3204.

Section 3204(8) should be approved as drafted as the reason for serving time in a correctional institution is not as important as the fact that correctional time was served. See ABA Standards, Sentencing Alternatives and Procedures, § 3.5(c) (Approved Draft 1968).

§ 3301. *Authorized Fines.*

The monetary penalties provided in § 3301 are unrealistically low. It is recommended, therefore, that the fine levels be substantially increased and that the alternative measure of subsection (2) be made inapplicable when the offender is a corporation.

§ 3402. *Timing of Parole; Criteria.*

Section 3402 should be approved as drafted. It has been suggested that there be added to the criteria to be used in denying parole the fact that the prisoner was initially sentenced as a dangerous special offender and is still considered a danger to the public. However, the nature of the initial sentence would tell nothing of the prisoner's present suitability for parole; his "dangerousness" could be considered under 3402(1)(a). There is thus no need for amendment.

§ 3501. *Disqualification From and Forfeiture of Federal Office.*

Section 3501 should be approved as drafted. While it has been suggested that disqualification should be legislatively mandated in certain instances, the interests of society would be better served by a provision which permitted the individualizing of such penalties.

§ 3601. *Death or Life Imprisonment Authorized for Certain Offenses.*

Provisional Chapter 36 is now obsolete in the light of the decision in *Furman v. Georgia*, 408 U.S. 238, 92 Sup.Ct. Rptr. 2726 (1972), and should be deleted.

28 U.S.C. § 1291. *Final Decisions of District Courts.*—It is recommended that provision be made for the appellate review of sentences, provided such is in accord with the ABA Standards, Appellate Review of Sentences (Approved Draft, 1968).



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